

**Exhibit D – Transcript of Hearing, Oct. 27, 2010 [docket no. 12552]**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case Nos. 08-13555 (JMP)

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

October 27, 2010  
10:07 AM

B E F O R E:  
HON. JAMES M. PECK  
U.S. BANKRUPTCY JUDGE

1

2 HEARING re Debtors' Twenty-Eighth Omnibus Objection to Claims  
3 (Valued Derivative Claims)

4

5 HEARING re Debtors' Thirty-Fifth Omnibus Objection to Claims  
6 (Valued Derivative Claims)

7

8 HEARING re Debtors' Thirty-Sixth Omnibus Objection to Claims  
9 (Failure to Submit Guarantee Questionnaire Claims)

10

11 HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims  
12 (No Liability Claims)

13

14 HEARING re Debtors' Thirty-Eighth Omnibus Objection to Claims  
15 (Amended and Superseded Claims)

16

17 HEARING re Debtors' Fortieth Omnibus Objection to Claims (Late-  
18 Filed Claims)

19

20 HEARING re Debtors' Forty-First Omnibus Objection to Claims  
21 (Late-Filed Claims)

22

23 HEARING re Debtors' Forty-Second Omnibus Objection to Claims  
24 (Late-Filed Lehman Programs Securities Claims)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HEARING re Debtors' Forty-Third Omnibus Objection to Claims  
(Late-Filed Lehman Programs Securities Claims)

HEARING re Debtors' Forty-Fourth Omnibus Objection to Claims  
(Settled Derivative Claims)

HEARING re Debtors' Twenty-Ninth Omnibus Objection to Claims  
(No Blocking Number LPS Claims)

HEARING re Debtors' Thirty-Ninth Omnibus Objection to Claims  
(Duplicative Claims)

HEARING re Debtors' Objection to Proofs of Claim Filed By  
William Kuntz III (Claim Nos. 33550, 33551, 33552, 35121, and  
35430)

Transcribed by: Lisa Bar-Leib

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP  
Attorneys for Debtors and Debtors-in-Possession  
767 Fifth Avenue  
New York, NY 10153

BY: SHAI Y. WAISMAN, ESQ.  
PENNY P. REID, ESQ.  
MARK BERNSTEIN, ESQ.

WEIL, GOTSHAL & MANGES LLP  
Attorneys for Debtors and Debtors-in-Possession  
200 Crescent Court  
Suite 300  
Dallas, TX 75201

BY: ERIN D. ECKOLS, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MILBANK, TWEED, HADLEY & MCCLOY LLP  
  
Attorneys for the Official Committee of Unsecured  
  
Creditors  
  
One Chase Manhattan Plaza  
  
New York, NY 10005

BY: DENNIS C. O'DONNELL, JR.  
  
MATTHEW KANTOR, ESQ.

DUANE MORRIS LLP  
  
Attorneys for Aspecta Assurance International  
  
Luxembourg, S.A.  
  
1540 Broadway  
  
New York, NY 10036

BY: PATRICIA H. HEER, ESQ.

KATTEN MUCHIN ROSENMAN LLP  
  
Attorneys for RBC Capital Markets Corp.  
  
575 Madison Avenue  
  
New York, NY 10022

BY: JEFF J. FRIEDMAN, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THALER & GERTLER LLP  
Attorneys for August '98 Trust  
90 Merrick Avenue  
Suite 400  
East Meadow, NY 11554

BY: KIM D. VICTOR, ESQ.

POLSINELLI & SHUGHART  
Attorneys for Interested Party  
700 West 47th Street  
Suite 1000  
Kansas City, MO 64112

BY: MICHAEL S. FOSTER, ESQ.  
(TELEPHONICALLY)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STUTMAN, TREISTER & BLATT  
Attorneys for Lehman Brothers Holdings, Inc.  
1901 Avenue of the Stars  
12th Floor  
Los Angeles, CA 90067

BY: MARINA FINEMAN, ESQ.  
(TELEPHONICALLY)

ALSO APPEARING:  
WILLIAM A. KUNTZ, PRO SE  
Box 461  
Lake Placid, NY 12946

BY: WILLIAM A. KUNTZ



1 P R O C E E D I N G S

2 THE COURT: Please be seated. Good morning.

3 MR. WAISMAN: Good morning, Your Honor. Shai Waisman,  
4 Weil Gotshal & Manges on behalf of Lehman Brothers Holdings and  
5 its affiliate debtors. Your Honor, we're here this morning on  
6 the hearing on our objection to claims. A rather lengthy  
7 agenda was filed yesterday afternoon. An amended agenda was  
8 filed last night to reflect a few matters that were being  
9 adjourned. The length of the agenda really reflects a number  
10 of matters being adjourned to future hearings and don't expect  
11 a lengthy hearing today. If Your Honor is okay with it, we  
12 would proceed in the manner in which the matters are set forth  
13 in the agenda.

14 THE COURT: That's fine.

15 MR. WAISMAN: The first two matters, Your Honor,  
16 debtors' twenty-eighth and thirty-fifth objections to claims  
17 will be handled by my partner, Penny Reid, who has had primary  
18 responsibility for derivative related claims. And I'd like to  
19 introduce Ms. Reid to the Court this morning. From there, Ms.  
20 Eckols, who the Court has met, will handle basically the  
21 balance of the matters this morning, uncontested matters 3  
22 through 10 and contested matters 1 and 2. And I will clean up  
23 with the third contested matter on the agenda and that would be  
24 the conclusion of the hearing this morning.

25 THE COURT: All right.

1 MR. WAISMAN: Thank you.

2 THE COURT: Good morning.

3 MS. REID: Good morning, Your Honor. My name is Penny  
4 Reid with Weil Gotshal on behalf of the debtors. And I'm going  
5 to address the twenty-eighth and thirty-fifth omni objections.

6 With respect to the twenty-eighth omnibus objection,  
7 Your Honor, we'll recall that we had adjourned three of the  
8 claims in that matter to today's hearing to try to resolve  
9 them. We have been successful. The debtors have been  
10 successful in resolving one of those matters with the U.S.  
11 AGBank. And we have a proposed supplemental order reducing  
12 this claim to the settled amount.

13 The other two matters that we adjourned from the  
14 twenty-eighth omni are still being negotiated and we are  
15 respectfully requesting the Court to adjourn those two matters  
16 until the November 10th hearing to allow us a little bit  
17 further time. But we are in negotiations with them. It's  
18 Investcorp and Rutland Hospital.

19 THE COURT: Okay.

20 MS. REID: With respect to the thirty-fifth omni  
21 objection, Your Honor, the debtors are seeking to reduce and  
22 allow six claims that relate to three counterparties who did  
23 not file any response to the thirty-fifth omni objection.  
24 Specifically, we are seeking to reduce the claim from the city  
25 of Tacoma from 509,600 dollars to 135,596 dollars; the claim

1 from De Longhi Capital Services from 1,262,407 dollars to  
2 1,186,071 dollars; and the claim of Poste Italiane S.P.A. from  
3 994,922 dollars to 939,545 dollars.

4 As to the remaining fourteen claims, which relate to  
5 seven counterparties, the debtors are respectfully requesting  
6 this Court to adjourn the hearing until January 20th, 2011  
7 claims hearing date which will allow the debtors to try and  
8 resolve these matters amicably with the respondents. And we  
9 have an order both reducing the claims that were responded to  
10 as well as adjourning the other seven claims.

11 THE COURT: All right. That's fine.

12 MS. REID: Thank you, Your Honor.

13 MS. ECKOLS: Good morning, Your Honor. Erin Eckols on  
14 behalf of the debtors. I will be covering agenda items 3  
15 through 12 which cover omnibus objections 36 through 44 as well  
16 as the carryover items for omnibus objection 29.

17 The debtors are proceeding today largely on an  
18 uncontested basis. The only contested matters with respect to  
19 the omnibus objections are the carryover items from omni 29  
20 and one unresolved response to omni 39.

21 Your Honor, the debtors are continuing to diligently  
22 process the tens of thousands of claims filed in these Chapter  
23 11 cases. On September 18th, the debtors filed omnibus  
24 objections 36 through 44 seeking to disallow and expunge over  
25 1800 claims and seeking to reduce and reclassify an additional

1 fifty-three.

2 For each of these omnis, Your Honor, the debtors  
3 continued their practice of prominently identifying a specific  
4 debtor's counsel that claimants could call with any questions  
5 with any questions they may have. And debtors made sure to  
6 reach out to every claimant or counsel that contacted them with  
7 questions.

8 Because omnis 36 through 38 and 40 to 44 are  
9 proceeding uncontested today, I intend to move through each one  
10 of these with a very brief description and then move on to the  
11 contested matters.

12 Your Honor, agenda item number 3, omnibus objection  
13 36, this omnibus objection seeks to disallow and expunge claims  
14 for failure to comply with the bar date order. Specifically,  
15 the bar date order required parties asserting guaranty claims  
16 to complete a guaranty questionnaire. The holders of the  
17 claims on omnibus objection 36 did not complete the required  
18 questionnaire and none of them filed responses. Thus, the  
19 debtors are proceeding uncontested with respect to that omni  
20 and request that the Court grant omnibus objection number 38  
21 (sic).

22 THE COURT: It's granted.

23 MS. ECKOLS: With respect to agenda item number 4,  
24 debtors' omnibus objection to claims number 37, no liability  
25 claims, this omnibus objection seeks to disallow and expunge

1 that are asserted against nondebtor entities but were filed in  
2 these Chapter 11 cases. Therefore, they are not appropriately  
3 filed in these Chapter 11 cases. Again, this matter is  
4 proceeding on an uncontested basis. The responses received  
5 have been adjourned. And therefore, we ask the Court to grant  
6 omnibus objection number 37.

7 THE COURT: Omnibus objection number 37 is granted.

8 MS. ECKOLS: Agenda item number 5 is debtors' omnibus  
9 to claims number 38. This omnibus objection is to eliminate  
10 claims that have been amended or superseded by other claims on  
11 the claims register. There have been two changes to language  
12 on the order since the proposed order was filed and these  
13 changes were made of the request of counsel to resolve some  
14 questions or concerns that they had raised. One of those  
15 changes was to clarify that not only the surviving claim to the  
16 extent it appropriately amended a claim shall be deemed timely  
17 filed for that. That extends to any amended derivative and  
18 guaranty questionnaires and supporting documentation that went  
19 with those surviving claims.

20 The other change that was requested by counsel and  
21 debtors agreed to was to clarify that while debtors reserve the  
22 right to object to any of the surviving claims, the debtors  
23 will not object to a surviving claim that has been allowed by  
24 order of the Court or by a signed settlement or termination  
25 agreement authorized by the Court.

1 So those have been the only two changes to the order.  
2 We're proceeding therefore on an uncontested basis and request  
3 that the Court grant omnibus objection number 38.

4 THE COURT: Omnibus objection number 38 is granted.

5 MS. ECKOLS: Your Honor, agenda items 6 through 9 are  
6 omnibus objections 40 through 43. These are the omnibus  
7 objections for late-filed claims and late-filed Lehman program  
8 securities claims. Because these omnibus objections are very  
9 similar, I was going to discuss them altogether unless Your  
10 Honor has an objection to me doing that.

11 THE COURT: No. That's fine.

12 MS. ECKOLS: Okay. On omnibus objections 40 and 41,  
13 these are the omnibus objections to disallow and expunge claims  
14 that were filed after the September 22nd, 2009 bar date.  
15 Omnibus objections 42 and 43 are to disallow and expunge Lehman  
16 program securities claims that were not filed by the November  
17 2nd, 2009 bar date. There are a total of over 1500 claims on  
18 these omnibus objections. The debtors are proceeding on an  
19 uncontested basis having adjourned nearly all of the responses  
20 that were received. And therefore, the debtors respectfully  
21 request that the Court grant omnibus objections 40 through 43.

22 THE COURT: Those are all granted.

23 MS. ECKOLS: Thank you. Agenda item number 10 which  
24 is debtors' forty-fourth omnibus objection to claims, this is a  
25 consensual omnibus objection in order to reduce, reclassify and

1 allow claims that were settled pursuant to assigned termination  
2 agreements. These claims were where parties had reached an  
3 agreement with the debtors with respect to the claim amount of  
4 classification that is not reflected on the group of claims.  
5 And omnibus objection is simply seeking to modify those claims  
6 to conform to the parties' agreement. Therefore, the debtors  
7 respectfully request that the Court grant omnibus objection 44.

8 THE COURT: Omnibus objection 44 is granted.

9 MS. ECKOLS: Your Honor, that wraps up the uncontested  
10 claims matters. And moving on to the contested claim matters,  
11 agenda item number 11 which is some carryover items from  
12 debtors' twenty-ninth omnibus objection to claims.

13 As Your Honor may recall, omnibus objection 29 sought  
14 to disallow and expunge Lehman program securities claims that  
15 violated the bar date order because they did not include the  
16 required blocking number. At the September 1 claims hearing,  
17 Your Honor granted the omnibus objection with respect to the  
18 uncontested claims and today we are taking up the three  
19 contested claims.

20 The responses or the parties contesting are RBC  
21 Capital Markets, the August '86 Trust and Aspecta Assurances  
22 International. Each of these respondents failed to include the  
23 required blocking number with their proof of claim and thus  
24 violated the bar date order. The debtors ask that this Court  
25 enforce the blocking number requirement uniformly and expunge

1 the noncompliant claims.

2 The blocking number requirement is critical and needs  
3 to be enforced in order for debtors to effectively reconcile  
4 the Lehman program securities claims. The bar date order  
5 established specific procedures for the filing of those claims  
6 because of the unique characteristic of those securities.  
7 Specifically, the program securities did not have an indenture  
8 trustee that could file a global claim on behalf of the  
9 individual holders of those securities. So the individual  
10 holders would have to file their own claims.

11 This presented serious issues as far as reconciliation  
12 of the claims because the debtors would not be able to confirm  
13 ownership or amount of a particular security. A security could  
14 have been traded every day for thirty days prior to the bar  
15 date and each holder could have filed the claim risking  
16 duplicative and/or excessive distributions. The blocking  
17 number requirement was specifically designed to address this  
18 problem. The blocking number, when issued, would confirm  
19 ownership and amount of a security as of a certain date and,  
20 once it was issued, trading for that particular security was  
21 frozen through the securities program bar date. The blocking  
22 number requirement was two part. A claimant had to actually  
23 obtain the blocking number and then include it with their  
24 timely filed proof of claim. That again, the blocking number  
25 plays a critical role for reconciliation of these claims and



1 significantly reduces the burden on debtors of reconciling  
2 these claims.

3 THE COURT: Can I break in for a minute --

4 MS. ECKOLS: Sure.

5 THE COURT: -- and just ask a very basic question  
6 about how one obtains blocking numbers. Let's just say that  
7 you're the August '86 Trust to pick one that happens to be up  
8 today. And you're trying to comply faithfully with the  
9 requirements of the order establishing procedures for filing  
10 proofs of claim. And you know that there is a need to obtain a  
11 blocking number. Procedurally, how would you go about doing  
12 that?

13 MS. ECKOLS: Your Honor, the claimant would need to  
14 reach out to the applicable clearing agency, Euroclear or  
15 Clearstream, and they would issue the blocking number for the  
16 claimant.

17 THE COURT: And once that blocking number is issued,  
18 that becomes, in effect, the tracking number for the claim?

19 MS. ECKOLS: Yes, Your Honor. That is correct.

20 THE COURT: Okay.

21 MS. ECKOLS: Allowing parties to circumvent the  
22 blocking number requirement eviscerates the benefits that it  
23 was intended to have and will make it incredibly difficult, if  
24 not impossible, for the debtors to reconcile those claims. And  
25 there are a large number of Lehman program securities claims to

1 reconcile. There are over approximately 31,000 Lehman program  
2 securities claims which is almost half of the amount of claims  
3 in total filed in these Chapter 11 cases. Again, debtors  
4 believe that the blocking requirement must be uniformly and  
5 strictly enforced.

6 The blocking number requirement was expressly set  
7 forth in the bar date order. It specifically stated that  
8 claimants had to obtain the blocking number and include it on  
9 their proof of claim. This requirement was also specifically  
10 set forth in the securities program bar date notice and, in  
11 fact, that bar date notice had a whole section that said  
12 "special note regarding blocking numbers". That was in bold.  
13 And that was on the court-approved bar date notice.

14 The proof of claim form that this Court approved for  
15 Lehman program securities claim also expressly said that the  
16 claimant had to obtain had to obtain the blocking number and  
17 had a space for them to put it on there. The bar date notice  
18 was widely disseminated. It was given to the clearing agencies  
19 and it was also published in twenty-six papers in eighteen  
20 countries, ten languages plus seven local dialects.

21 Now the respondents do not dispute that they failed to  
22 comply with one or both parts of the blocking number  
23 requirement. And the responses do not dispute that they  
24 received notice of the blocking number requirement or that  
25 notice was somehow deficient. The responses do not dispute

1 that the requirement to obtain the blocking number and put it  
2 on the proof of claims was clear. Instead, the responses  
3 assert that they should be treated differently from other  
4 Lehman program securities claimants that had to comply with the  
5 bar date order's procedures.

6 Now I did want to alert Your Honor to the fact that  
7 the August '86 Trust did file an affidavit on Monday afternoon  
8 that did, for the first time, assert that they had no notice of  
9 this requirement and that they didn't receive proper notice of  
10 it. So it appears as though the August '86 Trust in response  
11 to debtors' reply has changed position a little bit. Again,  
12 debtors just wanted to notify the Court of this. We believe it  
13 is an impermissible surreply but we did want you to know that  
14 August '86 Trust was raising this now kind of belatedly.

15 The reasons provided by each respondent are vague and  
16 unsubstantiated. They cite a mistake or inadvertence of some  
17 sort. But whatever the excuse, the respondents all seek to  
18 justify their noncompliance with a no harm no foul argument  
19 that doesn't withstand scrutiny.

20 Specifically, with respect to Aspecta. Aspecta failed  
21 to obtain a blocking number altogether but claims no harm no  
22 foul because it says it held the securities "at all relevant  
23 times". There is no explanation of what "all relevant times"  
24 actually means and no support other than two unsubstantiated  
25 documents that purport to establish ownership of the securities

1 as of September 2010 which, obviously, is nearly a year after  
2 the applicable bar date. So even if Aspecta had produced  
3 admissible evidence establishing ownership of the securities as  
4 of September 2010, which it did not, this does not accomplish  
5 the goals of the blocking number requirement or render the  
6 blocking number unnecessary. It does not confirm ownership  
7 prior to bar date. It does not prevent others from claiming  
8 those same securities. And so, the reconciliation issues that  
9 the blocking number requirement specifically sought to avoid  
10 are present here. Because Aspecta utterly failed to comply  
11 with the blocking number procedures, its claim should be  
12 expunged.

13 The no harm no foul arguments asserted by RBC and the  
14 August '86 Trust simply miss the point. RBC and the August '86  
15 Trust assert that the failure to include a blocking number with  
16 their claim should be excused because they have the number and  
17 simply didn't give it to the debtors. However, the blocking  
18 number requirement is two-fold. The claimant had to obtain the  
19 blocking number and actually put it on their timely filed proof  
20 of claim. Obtaining a blocking number but not providing it to  
21 the debtors does not allow the debtors to effectively process  
22 and reconcile these 31,000 program securities claims.

23 Moreover, the harm to the debtors in making exceptions  
24 to the blocking number requirement, whether because the  
25 claimant forgot to include it with their proof of claim or

1 simply did not obtain one, the harm is that it encourages other  
2 claimants to come and seek similar exceptions. The debtors  
3 implemented the blocking number procedures because it knew that  
4 the volume of the Lehman program securities claims was going to  
5 be large and the reconciliation was going to be difficult. The  
6 blocking number was designed to avoid a parade of claimants  
7 seeking to engage in contested hearings, possible lengthy  
8 evidentiary hearings, regarding whether or not they are the  
9 valid holder as a Lehman program securities claim. In short,  
10 the contested hearing that debtors are engaging in right now  
11 with the possibility of hundreds more to follow if leniency is  
12 granted demonstrates the harm to the debtors and is precisely  
13 why the blocking number requirement should be strictly  
14 enforced.

15 THE COURT: Can I break in and ask you a question --

16 MS. ECKOLS: Of course.

17 THE COURT: -- about that? My understanding of how  
18 this works procedurally is that the blocking number is to be  
19 included on the filed claim and it's used by those who are  
20 processing claims for the debtor in determining how to allow  
21 claims based upon Lehman program securities. Assuming that a  
22 claimant has obtained a blocking number and fails for whatever  
23 reason to include that number on the documents that are being  
24 processed but later cures that defect by providing what I'll  
25 call an amended claim saying I'm sorry, I forgot, how is the

1 debtor prejudiced if at all?

2 MS. ECKOLS: Your Honor, it's really the slippery  
3 slope problem and the encouraging other parties who did not,  
4 for whatever reason, comply with the blocking number  
5 requirement to come in and seek exceptions.

6 THE COURT: Yes. But if the party who was seeking the  
7 exception has a blocking number that doesn't create an  
8 exception for a party that failed to obtain a blocking number,  
9 does it?

10 MR. WAISMAN: If I may, Your Honor. And this is the  
11 reason we -- Your Honor's very question is the reason that we  
12 are here on this objection and discussing it with the Court.  
13 The internal fear and concern is that if we are to say to those  
14 folks that call and say I actually complied. I called my  
15 broker or Euroclear or Clearstream obtaining my blocking  
16 number. I just forgot to include it. Here it is, no harm no  
17 foul. The concern is if we allow those in, we're then going to  
18 have the next variation, of which we're hearing about already  
19 which is, look, I didn't get the blocking number but I will  
20 provide an affidavit and a witness in court saying I held it in  
21 the years before the bar date, at the bar date, I still hold it  
22 today. So, in essence, you're blocking number requirement is  
23 met, no harm no foul. And we start to go down this slope where  
24 the magnitude of the claims here, 30,000 -- approximately  
25 30,000 people got notice, understood the notice complied.

1 There's obviously, as with the entirety of this bar date  
2 process, a large number of claimants that didn't comply. And  
3 if we made exception now, we are concerned that we are just  
4 allowing additional variations on the exception that are going  
5 to bog us down in the claims reconciliation process at this  
6 late date with a plan on file and bog down the process here in  
7 court with a magnitude of claims that have not yet really been  
8 seen in the Chapter 11 cases. So that's -- those are the  
9 reasons we are pressing the objections.

10 THE COURT: Okay.

11 MS. ECKOLS: Your Honor, just in conclusion, the  
12 debtors believe that the blocking number requirement -- clear  
13 notice was given. These respondents didn't comply and  
14 respectfully request that the Court overrule the responses and  
15 grant the twenty-ninth omnibus objection as to the RBC, the  
16 August '86 Trust and the Aspecta claims.

17 THE COURT: Okay. I see counsel in the room so I'll  
18 hear what they have to say. Mr. Friedman, you're number one.

19 MR. FRIEDMAN: Thank you, Your Honor. Jeff Friedman  
20 of KattenMuchinRosenman for RBC Capital Markets, Your Honor.  
21 According to what Ms. Eckols just said, the crux of the matter  
22 this morning is whether the bar date should be strictly and  
23 rigidly enforced based on a slippery slope argument that RBC is  
24 allowed to amend its claim and add a blocking number that it  
25 timely and properly obtained but merely failed to write down on

1 the proof of claim form, everyone will want to use that excuse.

2 I don't know what the magnitude of claims are that fit  
3 into that category. I do know that this omnibus objection  
4 before the Court, the twenty-ninth omnibus objection, objected  
5 to eleven claims apparently, a number of which didn't obtain  
6 blocking numbers.

7 It seems to me, Your Honor, that the issue is not  
8 simply the rigid enforcement of the Court's order. Every Court  
9 that enters a bar date order, Your Honor -- it's not only in  
10 this case; it's in other cases -- other judges in this court,  
11 bankruptcy judges generally expect their bar date orders will  
12 be complied with. And the penalty for doing so, particularly  
13 if you're late, that your claim may be disallowed in its  
14 entirety. But it seems to me, Your Honor, that the issue  
15 really is whether, in Lehman's case, decades of jurisprudence  
16 regarding amendments to claims, informal proofs of claims, will  
17 simply not apply in the Lehman case no matter how insignificant  
18 the harm is to Lehman. This is, in my view, the most  
19 hypertechnical objection because Lehman has known since we were  
20 put on notice that we had a blocking number, it was timely  
21 obtained. So that if they went to Euroclear and said, send us  
22 a list of blocking numbers you have for the bonds, they'd know  
23 that RBC obtained its blocking number for these bonds. And I  
24 don't know whether they've done that or not. But it would be  
25 surprising if there was not a double check against sort of



1 Euroclear and Clearstream's master list of blocking numbers. I  
2 don't know how they're doing this but it would be somewhat  
3 odd --

4 THE COURT: Well, let me just ask you something  
5 because I don't know how this procedure would ordinarily work.  
6 Are you saying that the blocking number requirement is  
7 effectively a redundancy because any complying creditor who has  
8 obtained a blocking number can have that number reproduced  
9 through the clearing systems by simply requesting a download?  
10 Are you saying that as a matter of fact or is that just surmise  
11 on your part?

12 MR. FRIEDMAN: I'm not suggesting that we could have  
13 done it. I would be somewhat surprised if Lehman, given the  
14 nature of what they're doing here, couldn't have done it. I  
15 mean, this whole blocking number system was set up for this  
16 procedure. Now maybe Euroclear has said to Lehman well, we're  
17 not telling you who we assigned particular blocking numbers to  
18 and what they're claim is. But clearly, Euroclear's got our  
19 blocking number assigned to RBC for at least 300,000 dollars  
20 worth of bonds with this ISIN number. The proof of claim that  
21 RBC filed, and it's attached to our response, used the wrong  
22 claim form. I mean, we represent RBC generally in this case  
23 and we filed and helped them file a number of properly  
24 completed program securities. RBC is a fairly far flung  
25 organization. For some reason that no one can really explain,

1 this claim came through their Minneapolis office, didn't go to  
2 the attorneys in New York or Toronto for RBC and there was a  
3 guy in RBC's office in Minneapolis that took his best shot. He  
4 had gotten information from the Bank of New York. That  
5 information had the blocking number on it. It had the  
6 Euroclear account number on it. He wrote the Euroclear account  
7 number on the proof of claim. But because he was using the  
8 regular Lehman proof of claim and not the program securities  
9 claim, there was no blank that said insert your blocking number  
10 here that would have tipped him off. He just didn't know.

11 Now I'm not claiming that we didn't get notice. We  
12 actually got direct notice. I'm not even saying this was a  
13 publication notice issue. This was a screw-up. And the  
14 question is, is this screw-up so bad that it's not subject to  
15 being amended. Because we do think in this case that the harm  
16 to Lehman is negligible. Again, I don't know how many claims  
17 are going to fit in this. But the slippery slope argument  
18 probably isn't all that significant for people who actually  
19 timely got blocking numbers and didn't include them. I mean,  
20 had we included the blocking number but transposed two digits  
21 also fatal because it's not the blocking number; it's a  
22 different number. I mean, I don't know where you draw the  
23 line, Your Honor. But it just seems to me that whether you use  
24 an informal proof of claim which is simply intended to put the  
25 debtor on notice that a particular claimant seeks to hold the

1 debtor and the estate liable with respect to a particular  
2 obligation has been satisfied in spades here.

3 On a scale of one to ten of the most aggressive  
4 amendments you might make, this is a 1. This is such a minor  
5 change. I mean, as the Seventh Circuit said in the Stoecker  
6 case, if I may briefly quote it, "If a documentation is  
7 missing, the creditor cannot rest on the proof of claim. It  
8 does not follow, however, that he is forever barred from  
9 establishing the claim. Nothing in the principles or  
10 practicalities of bankruptcy or in the language of any rule or  
11 statute justifies so disproportionate a sanction for a harmless  
12 error. A creditor should therefore be allowed to amend his  
13 incomplete proof of claim to comply with the requirements of  
14 3001 provided that other creditors are not harmed by the  
15 belated completion of the filing."

16 In fact, Your Honor, with respect to the data required  
17 by 3001, this claim meets that in its entirety. It is only  
18 this Court's additional requirement as requested by Lehman that  
19 a blocking number be obtained and be put on the proof of claim  
20 that's lacking here. And it's only that second part because we  
21 did timely obtain the blocking number.

22 So, Your Honor, we think that this satisfies the  
23 claim. We have filed an amended claim. We think that that  
24 claim satisfies it. We don't think there's been real harm to  
25 Lehman here because there's certainly been no distributions.

1 They're still in the reconciliation process. They have had  
2 our blocking number since we filed our response a couple of  
3 months ago. And we just think that, on these facts, the Court  
4 should allow the amended claim to stand.

5 THE COURT: Okay. Thank you.

6 MS. VICTOR: Good morning, Your Honor. Kim Victor  
7 from Thaler & Gertler representing the creditor, the August '86  
8 Trust. I also concur with the arguments that were just made.  
9 My client timely filed its proof of claim, signed, fully  
10 completed it, put in a broker's number, the brokerage number,  
11 the Barclay brokerage number rather than the blocking number.  
12 It was clearly just a misunderstanding. All the information  
13 was filled out, twenty-four pages were connected to the proof  
14 of claim that sufficiently the nature of the claim for the  
15 debtor. Once the debtor had advised that the blocking number  
16 was not included in the proof of claim, the creditor provided  
17 it debtors' counsel. We have also amended the original timely  
18 filed proof of claim which corrects any defects as to form to  
19 the original timely filed claim.

20 The point is that there is absolutely no harm to the  
21 debtor in this case. The debtor had sufficient knowledge of  
22 the claim. They don't put anywhere in their papers that they  
23 were unable to identify the nature of the claim, that they  
24 weren't given notice, properly timely filed notice of the  
25 claim. In this case, it's the creditor who stands to

1 completely lose a valid claim of 450,000 dollars. At this  
2 time, Your Honor, we ask that the amendment that has been  
3 attached to our responsive papers be included as a timely filed  
4 proof of claim as amended.

5 THE COURT: Just a question about the affidavit of  
6 Joseph Kelly. What am I supposed to do with that? And how  
7 does that affidavit which was filed on Monday impact the  
8 argument you've just made?

9 MS. VICTOR: It doesn't really, Your Honor. It  
10 doesn't really. It's just proof that there is a blocking  
11 number, that the blocking number was provided, that now the  
12 debtor is able to track the claim and that any amendment to the  
13 original claim is purely just to include that blocking number.  
14 There will be no changes to the original claim. So there is no  
15 prejudice to the debtor in this case. It was merely just a  
16 misunderstanding as far as the number was concerned.

17 THE COURT: Okay.

18 MS. HEER: Good morning, Your Honor. Patricia Heer  
19 Piskorski of Duane Morris on behalf of Aspecta Assurance  
20 International Luxembourg. Your Honor, Aspecta has filed a  
21 proof of claim timely and it provided sufficient documentation  
22 to sufficiently identify the notes at issue in that proof of  
23 claim.

24 THE COURT: Can I stop you for a second now because if  
25 I'm understanding the position of Aspecta which is a little bit

1 different from the position of RBC and the August '86 Trust.  
2 It's that even though you didn't obtain and disclose on your  
3 form a blocking number that that shouldn't matter because  
4 you've demonstrated that you always held the securities that  
5 are the subject to the proof of claim, is that right?

6 MS. HEER: Your Honor, we have attached documentation  
7 to the response to the objection seeking to disallow the claim  
8 which does give proof that at the time of the proof of claim  
9 those notes at issue in the proof of claim were held and owned  
10 and have continued to be held by Aspecta.

11 THE COURT: Yes. But it's true that Aspecta did not  
12 obtain a blocking number and didn't include a blocking number  
13 on its proof of claim.

14 MS. HEER: That's correct, Your Honor. And it did  
15 not. And it does understand the requirements of the bar  
16 date -- the program securities bar date order and the terms  
17 thereof. And the argument is set forth in the motion and there  
18 is the documentation provided in there. And we do thank you,  
19 Your Honor, for considering it.

20 THE COURT: Okay. Is there any response from the  
21 debtor?

22 MS. ECKOLS: Just a few points that we wanted to  
23 respond to, Your Honor. First, with respect to the no  
24 prejudice to the debtor, this is not a matter of ten or twenty  
25 or thirty claims that did not comply with the blocking number

1 requirement. Debtors are still trying to get a handle on the  
2 number of claims but right now believe it is definitely north  
3 of 500. So that is a significant number; it's not just one or  
4 two. And that is going to increase the burden significantly on  
5 debtors especially if all the claimants decide to come to court  
6 and seek to prove ownership of the securities at issue in some  
7 other manner.

8 With respect to August '86 request that the Court  
9 allow them to amend their claims, that issue -- the issue today  
10 is simply whether omnibus objection number 29 should be  
11 granted. No motions have been filed to date to allow  
12 amendments to these claims and we do not believe such relief  
13 should be considered today.

14 With respect to Aspecta -- Aspecta's argument that  
15 they've established that they've had ownership of the security,  
16 I guess, from the inception of this Chapter 11 case through the  
17 bar date, that is simply incorrect. The attachments to their  
18 response are simply two pages of documents that appear to have  
19 been created by the Bank of Luxembourg. And, at most, what  
20 they show is that as of September 2010, which is after the  
21 twenty-ninth omnibus objection was filed, that as of that late  
22 date, they appeared to own the securities. Therefore, it does  
23 not satisfy the goals of the blocking number requirement. And  
24 thus, Your Honor, we ask that omnibus objection 29 as to those  
25 three claimants be granted.

1 THE COURT: One more question about the impact of the  
2 blocking number. If a blocking number has been obtained and a  
3 proof of claim has been filed in reference to a security  
4 identified by such blocking number, is it permissible for the  
5 claim to be traded or is it, in fact, blocked until such time  
6 as a distribution is available from this estate?

7 MS. ECKOLS: Your Honor, I am actually going to allow  
8 Mr. Waisman to answer that question.

9 MR. WAISMAN: Your Honor may recall that subsequent to  
10 the bar date, there were supplemental procedures that were --

11 THE COURT: I recall.

12 MR. WAISMAN: And part of those procedures were to  
13 permit the claims to freely trade.

14 THE COURT: Yes. I recall. So here's where I become  
15 perplexed. Is the blocking number which is obtained as a  
16 condition to submitting a proof of claim based on Lehman  
17 program securities purely designed to facilitate tracking and  
18 claim management or is it also designed to limit trading at  
19 least up to the point that the proof of claim is filed? Or  
20 does it have no impact on trading?

21 MR. WAISMAN: It absolutely had impact on trading.  
22 Once somebody obtained a blocking number -- it could have been  
23 a day before the program securities bar date or a month prior.  
24 The moment they obtained that blocking number, that security  
25 could not trade. It was locked. And it was not until a date



1 well past the Lehman program securities bar date that the  
2 number became unblocked and was freely tradable. And the  
3 issues become even more complex because the bar date wasn't  
4 purely to track the individual security but it was also to  
5 reconcile duplications with the larger issuances that were held  
6 by the banks. And we have obviously inferences where the bank  
7 holding the note filed a proof of claim with the blocking  
8 number and then the individual holders who called their brokers  
9 who called Euroclear and Clearstream also obtained blocking  
10 numbers. You have this multiple layer.

11 THE COURT: I'm reminded by your comment that when  
12 there was a request jointly made by the debtors and certain  
13 creditor constituencies for a modification of the restrictions  
14 building to the bar date order to permit trading of Lehman  
15 program securities, even though there were no objections lodged  
16 to that request, that's my recollection that I did not  
17 immediately approve that motion but carried it to another  
18 omnibus hearing date out of expressed concern that there might  
19 be an impact upon the integrity of the bar date order itself.  
20 And I was ultimately satisfied that there would be no impact  
21 upon the bar date. And now I find myself at a claims hearing  
22 where the integrity of the proof of claim process is at issue  
23 as it relates to the blocking number component of the proof of  
24 claim. And what I'm still puzzling over, and I think I'd like  
25 just a little bit more explanation from debtors' counsel on

1 this, is the actual practical use of the blocking number in  
2 tracking claims, reconciling claims and allowing claims  
3 particularly in the environment in which these Lehman program  
4 securities are now being freely traded.

5 MR. WAISMAN: Your Honor, may I have a brief moment?

6 THE COURT: Sure.

7 (Pause)

8 MR. WAISMAN: Your Honor, Shai Waisman. Your Honor  
9 recalls correctly that the debtors came back with a group of  
10 interested creditors previously known as the Coalition of the  
11 Willing to seek an addendum to the Lehman program securities  
12 procedures. Those procedures -- we -- the debtors and, I  
13 believe, the committee always thought were part and parcel of  
14 the original program securities notice but they were -- there  
15 was enough concern that people wanted a supplemental order.  
16 Your Honor expressed concern that perhaps the debtors were  
17 succumbing to the hew and cry of the street in doing something  
18 that would undermine the integrity of the procedures and  
19 adjourn the matter. And we came back with an affidavit of a  
20 businessperson setting forth that the purpose of the program  
21 securities was to provide the debtors comfort that the party  
22 filing the proof of claim had actual ownership of the security  
23 at the time the claim was filed and at the time the bar date  
24 came. It was required to illustrate the integrity of the claim  
25 that the party held the claim that it wasn't traded every

1 single day up until the bar date and multiple claims being  
2 filed. And given that we were past the program securities bar  
3 date and therefore anybody that filed a proof of claim with the  
4 blocking number, we knew owned the security on that day and  
5 that's the only day that matters for the purpose of  
6 establishing the claims. Thereafter, there was no reason to  
7 require them to continue to hold the claim. No benefit to us.  
8 There should be a free market as the bankruptcy rules suggest  
9 there should be in the trading of claims. And the order was  
10 meant to facilitate the fact that we were so far removed from  
11 the bar date there was going to be no benefit to us from  
12 restricting trading any further. Parties could continue to  
13 trade because what we needed we had at that point. We had  
14 proof that a party that filed the claim owned the security on  
15 the day in question.

16 We do not use blocking numbers now to track claims at  
17 all. When we go through the 66,000 claims that sit in a pile,  
18 we get to a Lehman program securities claim, we verify that  
19 there's a blocking number. We do check it against our master  
20 list to make sure that it's a real blocking number. And that  
21 proves to us that the party that filed the claim owned the  
22 security and therefore is the rightful claimant. The next  
23 step, of course, is to make sure whether somebody else filed a  
24 proof of claim on behalf of that issuance.

25 THE COURT: I hear you although I must say that this

1 adds strength to the argument made by Mr. Friedman that on a  
2 scale of one to ten, this is a one. This isn't a ten in terms  
3 of technical noncompliance because the blocking number is, in  
4 effect, an extra protection designed to make sure that the  
5 party who filed the claim with respect to these freely tradable  
6 instruments in fact was the owner of the claim at a particular  
7 point in time that is relevant for bankruptcy purposes but for  
8 no other purpose because the instruments may have traded  
9 multiple times already, in some instances, and may continue to  
10 trade in the future.

11 Now I have no problem with the free trading of  
12 securities. The only problem I'm having right now is whether  
13 the significance of the failure to include a blocking number on  
14 a proof of claim is so material a failure to comply with the  
15 expressed requirements of the proof of claim bar date  
16 procedures as to warrant claim disallowance when a party  
17 objects. And I'm having some trouble with this right now,  
18 particularly, I must tell you in the case -- it kind of goes up  
19 in significance, A, B and C. RBC has the strongest position;  
20 August '86 Trust has the next strongest position; and Aspecta  
21 Assurance has the weakest position, as I see it. But I think  
22 Aspecta is simply making an argument well, we didn't do it but  
23 we own the security. Here. See this attachment to our  
24 response. They clearly didn't comply with the no blocking  
25 number problem. But they, in effect, make an argument for the

1 great unwashed that didn't comply at all. That's your  
2 floodgates problem, the problem that parties who never obtained  
3 a blocking number will come forward and say we have the ability  
4 through extrinsic evidence to demonstrate that we, in fact, own  
5 the security at the time that we filed the proof of claim. I  
6 have a problem with that.

7 But as to anybody else who actually had a blocking  
8 number and somehow messed up, I'm having a hard time seeing why  
9 this is such a problem for the debtor. And I need to  
10 understand a little bit more about why procedurally this  
11 creates such a potential hornet's nest of claim administration  
12 difficulty down the road.

13 MR. WAISMAN: Your Honor, I'd say a couple things.  
14 First of all, there is nothing Your Honor has just said that we  
15 disagree with. We have spent a lot of time struggling with  
16 these very issues. The obvious statement that the bar date in  
17 this case was so unique that it does not fit squarely within  
18 the precedent, and I understand Mr. Friedman citing to the  
19 legend of case law on amendments, but this case just doesn't  
20 fit squarely within those parameters and it is difficult to  
21 reconcile.

22 The program securities requirement was very explicit  
23 and specific and absolutely necessary. Without it, this case  
24 would be a quagmire and we would have no ability to reconcile  
25 over 30,000 claims.

1 In many ways the program's security's blocking number  
2 is itself the claim. Without it, you're submitting a statement  
3 that at some point you own something. But if you don't submit  
4 the program security's number it doesn't -- it doesn't comply  
5 for the purposes of a bar date in this case. We have, in other  
6 circumstances, been to Your Honor with claims issues, claims  
7 objections and have agreed with Your Honor that we need to  
8 strictly enforce the very specific and very unique requirements  
9 of this bar date order because it is such a slippery slope.  
10 And the fear here is that we know of here eleven, we already  
11 know of 500 more, it's a reconciliation. We haven't been  
12 through the lion's share of our claims. The number is  
13 certainly to grow of claimants who got the blocking number but  
14 simply didn't include, forgot for whatever reason. And as I  
15 said before, we are here because that's a slippery slope to --  
16 well, they forgot -- I forgot to get it but I can prove to you  
17 that I had it, and then we're going to be inundated with  
18 thousands upon thousands of claimants coming to this court to  
19 prove that they held the security and that they can meet the  
20 purpose of the program securities blocking number requirement  
21 by extrinsic evidence, even though they didn't supply the  
22 number.

23 And when you try to differentiate those two, you come  
24 back to there was a requirement, it was to be strictly enforced  
25 and people didn't comply. And as Ms. Eckols said, a number of

1 times, there were two requirements; to get the number and to  
2 include it. If we start to excuse one people are certainly  
3 going to argue you have to excuse the other, and we have a hard  
4 time differentiating between those two.

5 THE COURT: I'm not sure I have such a hard time  
6 differentiating between those two.

7 MR. WAISMAN: Well, you wear the black robe.

8 THE COURT: That's true. But obviously claimants that  
9 do everything perfectly are to be applauded for navigating what  
10 is a fairly complex claims process in this case. This is not,  
11 by any means, standard issue. But as I understand the purpose  
12 to be served by the obtaining and inclusion of a blocking  
13 number, it is to establish, in a user-friendly way from the  
14 perspective of the debtors, that a particular claimant within  
15 the pool of holders of Lehman program securities, in fact was a  
16 holder on the relevant date, correct?

17 MR. WAISMAN: That's correct.

18 THE COURT: I think that in the case of RBC capital  
19 that there really has been the kind of compliance that fits  
20 within the applicable case law that I cited in my omnibus late  
21 filed claims decision, in which good faith attempts to comply  
22 coupled with confusion can lead to an excuse. And here there  
23 was good faith compliance in the sense of obtaining a blocking  
24 number and somebody in Minneapolis goofed, they win. Now, they  
25 win on particularized facts and I don't think that opens a

1 door.

2 My next question to myself is well does August '86  
3 Trust win? And maybe I need to think some more about that  
4 after taking a look at the affidavit of Joseph Kelly, which  
5 obviously Mr. Kelly, who's a solicitor, thought worthy of my  
6 attention. I haven't paid enough attention to it yet and I  
7 want to think about it some more.

8 But let's just say, for the sake of discussion, that  
9 August '86 Trust wins too, what's the principle that has just  
10 been established? It seems to me that the principle is that  
11 anybody who has gone to the trouble of getting a blocking  
12 number but who has failed, through negligence or administrative  
13 error, to include the blocking number but who later provides  
14 that blocking number is, in effect, curing the defect in a  
15 manner that doesn't take away from the integrity of the bar  
16 date order. Nor does it in a material way because I don't  
17 imagine there's going to be a huge class, but I could be wrong,  
18 of parties who actually obtain the blocking number and then  
19 negligently failed to include it.

20 It seems to me that the debtor is still in a position  
21 to use the blocking number because the blocking number has been  
22 provided and the integrity of the proof of claim, as it relates  
23 to Lehman program securities is preserved.

24 The Aspecta case is different. That's the we didn't  
25 do it at all problem but we have other means of establishing,



1 in a way that we think should be credible, that we held Lehman  
2 program securities at the time that a proof of claim was filed  
3 and completely ignored the requirement of including a blocking  
4 number. They lose.

5 And I believe that you can draw a line here that says  
6 if you have a blocking number you have done everything that you  
7 can reasonably do to meet the spirit of the bar date notice as  
8 it relates to Lehman program securities, assuming that you  
9 have, for good cause, failed to include. That you have reason  
10 to establish that there was legitimate confusion or a  
11 legitimate failure to comply, not just I willfully held it back  
12 because I thought it was a stupid requirement, that's not going  
13 to work. But if there was what amounts to good faith efforts  
14 to comply with that requirement and you then later provide the  
15 number, it seems to me that the blocking number component of  
16 this requirement is satisfied.

17 MR. WAISMAN: Your Honor, if I may interject for one  
18 moment. As Your Honor is describing this narrow exception, it  
19 might be helpful if it relates to entities that timely filed  
20 proofs of claim, have obtained a blocking number but for good  
21 cause failed to include and later provide it.

22 THE COURT: That's exactly what I'm saying. That  
23 can't be a very big class of claimants and if it turns out to  
24 be, well, so be it.

25 That's my best effort at walking a tightrope created

1 by these requested exceptions to the blocking number  
2 requirement of the bar date notice. I'm not making a ruling  
3 yet with respect to the August '86 Trust because I want to take  
4 some time to look at the affidavit of Joseph Kelly. But if the  
5 August '86 Trust fits within the exception, I've just  
6 articulated, then they'll prevail. I'm sorry Aspecta loses.  
7 They just didn't get a blocking number and they're out of  
8 court.

9 MR. WAISMAN: Thank you, Your Honor. That guidance is  
10 very, very helpful as we try to navigate these waters and turn  
11 to Your Honor for guidance on the narrow calls.

12 THE COURT: Okay.

13 MR. WAISMAN: Greatly appreciated.

14 MS. ECKOLS: Thank you, Your Honor.

15 MR. FRIEDMAN: Your Honor, I just want to figure out  
16 the best mechanics to get an order reflecting your decision  
17 with respect to RBC.

18 MR. WAISMAN: I think what we would do is remove it  
19 from the proposed -- remove your claim from the proposed order  
20 that we hand up today and there's no objection pending to your  
21 claim.

22 MR. FRIEDMAN: Okay. We do have an amended claim; we  
23 can deal with that by stipulation.

24 MR. WAISMAN: Why don't we speak and take care of it?

25 MR. FRIEDMAN: Thank you very much, Your Honor.

1 THE COURT: Okay.

2 MR. WAISMAN: I'm sorry, Your Honor, just one moment.  
3 Thank you.

4 THE COURT: You can feel free to confer.

5 (Pause)

6 MS. ECKOLS: Your Honor, taking up agenda item number  
7 12, which is debtor's thirty-ninth omnibus objection to claims,  
8 this is seeking to disallow and expunge claims that are  
9 duplicative, either exactly or in substance of another claim  
10 filed for the same party.

11 There is only one formal response. It was filed on  
12 behalf of eight claimants. Hesitate to call it an objection  
13 because it states that if our omnibus objection is only seeking  
14 to disallow duplicative claims, then it has no objection to us  
15 doing so and the debtors are only seeking to disallow and  
16 expunge claims that are duplicative by this omni.

17 THE COURT: Everybody in that category appears to be a  
18 citizen and resident of Greece.

19 MS. ECKOLS: That is correct.

20 THE COURT: And I read that objection or response or  
21 reservation of rights, however we're going to characterize it  
22 and it wasn't entirely clear to me whether or not in fact they  
23 will have surviving claims.

24 If the answer is that they will have surviving claims,  
25 then I have no hesitation in granting the thirty-ninth omnibus

1 objection and treating their response as in effect a statement  
2 of no objection provided that they have surviving claims.

3 MS ECKOLS: Your Honor, those claimants do have  
4 surviving claims and they're set forth on the exhibit to that  
5 omnibus objection.

6 THE COURT: In that event, the thirty-ninth omnibus  
7 objection is granted.

8 MS. ECKOLS: Thank you, Your Honor. And at this point  
9 I am going to cede the podium to Mr. Waisman for the next  
10 agenda item. Thank you.

11 MR. WAISMAN: Your Honor, Shai Waisman again for the  
12 Lehman debtors. The final contested matter and final matter on  
13 the agenda today is the debtor's objection to the proofs of  
14 claim filed by William Kuntz, III, filed at docket number  
15 11351.

16 THE COURT: Mr. Kuntz is here.

17 MR. WAISMAN: Your Honor, as the Court has learned  
18 over time, Mr. Kuntz filed eleven proofs of claim in these  
19 Chapter 11 cases. Pursuant to three previous orders of the  
20 Court, six of those eleven claims were determined to be amended  
21 and superseded by other claims and were disallowed and  
22 expunged. Pursuant to this objection, the debtors seek to  
23 disallow and expunge the remaining five claims filed by William  
24 Kuntz.

25 Pursuant to the objection and as I indicated there

1 were five claims that we sought to disallow and expunge, we  
2 requested that two of the claims, 35121 and 35430 be expunged  
3 on the basis that they were superseded by three of the  
4 remaining claims.

5 Mr. Kuntz, in his several replies, did not respond or  
6 object to such relief and we request that Your Honor disallow  
7 and expunge claims 35121 and 35430 on the basis that there was  
8 no objection.

9 In any event, as Mr. Kuntz has stated on the record  
10 previously in these proceedings, he has three surviving claims  
11 that we reference in our objection and reply as the surviving  
12 claims. Mr. Kuntz asserts that each surviving claim is an  
13 unsecured but priority claim against Lehman Brothers Commercial  
14 Paper, Inc. Based on Mr. Kuntz' alleged claims against Grand  
15 Union Capital Corporation, an entity not in these Chapter 11  
16 cases, not a debtor in these Chapter 11 cases and not  
17 affiliated with any of the debtors.

18 Specifically, Mr. Kuntz asserts that he was the holder  
19 of certain zero coupon notes issued by Grand Union Capital and  
20 that he opted out of a settlement, with respect to such notes,  
21 in Grand Union's first Chapter 11 case in 1995. By opting out  
22 of the settlement Mr. Kuntz claims that his notes remained  
23 outstanding and that the indentures governing such notes were  
24 not cancelled.

25 Mr. Kuntz further alleges that in Grand Union

1 Company's third Chapter 11 case in 2000, and Your Honor will  
2 note I reference Grand Union Company, which was the entity that  
3 filed the third case in 2000, a distinct entity from Grand  
4 Union Capital Corporation, which is the entity that issued the  
5 zero notes to Mr. Kuntz.

6 Mr. Kuntz, in the third Chapter 11 case which related  
7 to Grand Union Company, a certain cash escrow fund that was  
8 created in the 1995 case, funded by Grand Union Company, was  
9 applied to a purported balance owing to Lehman Commercial  
10 Paper, Inc. Mr. Kuntz alleges to have an interest in such  
11 escrow, based on his ownership of the zero notes.

12 In support of his claims Mr. Kuntz has admitted, among  
13 other things, his own summaries of his alleged claims against  
14 Grand Union Capital Corporation, his indecipherable hand-  
15 written notes, certain Grand Union circulars and newspaper  
16 articles. None of the documents submitted by Mr. Kuntz  
17 reference Mr. Kuntz or any of the debtors in this case in a  
18 manner that would give rise to a claim.

19 The surviving claims provide no evidentiary support as  
20 to the legal or factual basis of the claims. Mr. Kuntz fails  
21 to provide actual -- any actual information regarding the Grand  
22 Union bankruptcies, either the bankruptcy of Grand Union  
23 Capital Corp or Grand Union Company or the relationship between  
24 those entities. He fails to provide any documents or evidence  
25 that establish he was a holder of notes issued by Grand Union

1 Capital Corp, that he had a claim against Grand Union Capital  
2 Corp based on such notes, that the escrow fund created in the  
3 first Chapter 11 case by Grand Union Company even existed, that  
4 he had any interest in such escrow, that LCPI or any other  
5 debtor received funds from that escrow, that any claim he had  
6 against such escrow, against Grand Union Capital Corp, against  
7 Grand Union Company leads to liability on behalf of Lehman  
8 Commercial Paper Inc. or any debtor in this Chapter 11 case.

9 As stated in our objection, because Mr. Kuntz has  
10 appeared in these Chapter 11 cases as a pro se litigant, we  
11 used extra effort to decipher the substance of the surviving  
12 claims from the information provided by Mr. Kuntz in all of his  
13 claims and the public records relating to the three Grand Union  
14 Chapter 11 cases.

15 To the best of the debtor's understanding, the  
16 surviving claims are based on the following facts, as set forth  
17 in detail in the objection.

18 In January of 1995 two related Grand Union companies  
19 filed for Chapter 11, Grand Union Company and Grand Union  
20 Capital Corporation. Grand Union Company was the operating  
21 entity; Grand Union Capital was the holding company that issued  
22 the debt.

23 Grand Union Capital issued the zero coupon notes well  
24 prior to the 1995 Chapter 11 case. Mr. Kuntz alleges that he  
25 is a holder of the notes. Mr. Kuntz failed to attach to his

1 proofs of claim or otherwise provide to the debtors or this  
2 Court with a copy of any of such notes that he allegedly holds.

3 That being said, upon our review of the Grand Union  
4 Chapter 11 cases we do not dispute that Mr. Kuntz was the owner  
5 of zero notes in the amount of 892,000 dollars. Mr. Kuntz  
6 alleges but has yet to provide any evidence that he held two  
7 other issuances of the notes totally in excess of, I believe,  
8 three million dollars.

9 In the first Grand Union Chapter 11 case Grand Union  
10 Company and the Official Committee of Unsecured Creditors  
11 entered into a settlement with respect to these zero notes.  
12 Pursuant to the settlement, upon the effective date of the  
13 Chapter 11 plan in that case, the zero notes issued by Capital  
14 Corp would be extinguished and the holders of those notes would  
15 receive warrants for the purchase of stock in Grand Union  
16 Company.

17 Mr. Kuntz filed an objection to the settlement and his  
18 objection in that first Chapter 11 case was overruled. At the  
19 plan confirmation hearing Grand Union Company represented that  
20 any holder of the zero notes who did not consent to the  
21 settlement would be able to keep -- maintain their notes. Mr.  
22 Kuntz opted out of the settlement and was to maintain his  
23 notes.

24 Again, the notes were issued by Grand Union Capital  
25 Corporation, pursuant to the first Chapter 11 case and the



1 confirmed plan in that case, Grand Union Capital Corporation,  
2 was to be dissolved upon the effective date of that plan. The  
3 plan was confirmed. Grand Union Capital Corp was dissolved.

4 Grand Union Company filed its second Chapter 11 case  
5 in 1998. During the course of that case Mr. Kuntz complained  
6 to the bankruptcy court that his notes from the first case were  
7 converted to warrants and that was improper based upon the  
8 statements made at the confirmation hearing because Mr. Kuntz  
9 did not consent to the settlement.

10 As a result, in the second Chapter 11 case, Mr. Kuntz  
11 and the debtors, at the Court's direction, entered into a  
12 stipulation that provided Mr. Kuntz his zero notes in Grand  
13 Union Capital Corporation, the entity that no longer existed.  
14 Mr. Kuntz then asserts that in the third Chapter 11 case of  
15 Grand Union Company a cash escrow fund created in the first  
16 bankruptcy case was, in this third bankruptcy case, paid to  
17 LCPI.

18 Mr. Kuntz provides no evidence of the existence of an  
19 escrow in which he or the holders of the zero notes had an  
20 interest. He provides no reference for the record Grand Union  
21 cases, no plan, no agreement, no order of the Court that  
22 established any such escrow. Even if Mr. Kuntz could establish  
23 the existence of an escrow, he fails to provide any evidence  
24 that the funds from such an escrow were taken by any debtor in  
25 this Chapter 11 case.

1 As stated in the objection, a cash escrow fund was  
2 created in the first Grand Union Chapter 11 case. It was  
3 created and funded by Grand Union Company in the amount of  
4 three million dollars. The purpose of the escrow was pursuant  
5 to a settlement between Grand Union and its financial advisor,  
6 Miller Tabak & Hirsch, MTH. And pursuant to that relationship  
7 MTH provided financial advisory services to Grand Union  
8 Company.

9 In connection with the first Chapter 11 case, MTH and  
10 Grand Union entered into a settlement of certain disputes  
11 between them pursuant to which Grand Union Company agreed to  
12 indemnify MTH and fund the escrow. Grand Union Company  
13 deposited the three million into the cash escrow account, which  
14 funds were to be used only to indemnify and reimburse MTH with  
15 respect to certain claims, if any, brought against MTH with  
16 respect to its role in Grand Union.

17 The settlement agreement between MTH and Grand Union  
18 is not related to the zero settlement and in fact makes no  
19 reference to the zero settlement or the zero notes. Neither  
20 the zero noteholders nor Mr. Kuntz had any interest in this  
21 escrow. In fact, as I indicated, the escrow was established by  
22 Grand Union Company, an entity separate and distinct from Grand  
23 Union Capital Corporation which issued Mr. Kuntz his zero  
24 notes.

25 The funds that were deposited in this escrow in the

1 first case were ultimately not needed to reimburse MTH and were  
2 distributed back into the general operating account of Grand  
3 Union Company in 2000, during the third bankruptcy case. No  
4 escrow agreement was ever created or ever existed in relation  
5 to the zero notes.

6 Mr. Kuntz' responses to our objection contain  
7 information and allegations that are unsupported by fact or  
8 law. Mr. Kuntz alleges that a transcript from one Grand Union  
9 case reflects that a cash escrow was applied to Lehman debt.  
10 Mr. Kuntz did not provide a transcript, a quote from such  
11 transcript, any motion filed seeking to disburse such funds, an  
12 order of the Court authorizing the disbursement of such funds,  
13 no evidence whatsoever.

14 Mr. Kuntz also alleges that a deposition purportedly  
15 taken from him by counsel to Grand Union somehow evidences his  
16 interest in Grand Union Capital Corporation and in these escrow  
17 funds. Mr. Kuntz fails to provide such -- a transcript of such  
18 deposition or any additional details.

19 Pursuant to his surviving claims, Mr. Kuntz alleges  
20 claims against LCPI in the aggregate amount of over eleven  
21 million dollars, not an insignificant claim. One would assume  
22 that Mr. Kuntz would have sought to recover his eleven million  
23 dollars, in his notes, well before September 2009 given that  
24 this escrow was created in 1995.

25 Mr. Kuntz provided no evidence of any letters, other

1 communications with Grand Union, seeking to recover the eleven  
2 million dollars from any of the Grand Union entities. He  
3 didn't file any action in state or federal court in the fifteen  
4 years seeking payment of his eleven million dollars. In fact,  
5 Mr. Kuntz, as I indicated, objected to the zero coupon  
6 settlement and got to keep his notes against Grand Union  
7 Capital Corporation.

8 He objected to the plan confirming the first Chapter  
9 11 case, which established the escrow in favor of MTH in the  
10 amount of three million dollars. He objected to that plan, his  
11 objection was overruled, the plan was confirmed.

12 In the second Chapter 11 case he obtained a  
13 stipulation, again reinstating his notes against Grand Union  
14 Capital Corporation, now a dissolved entity. And finally, as  
15 indicated in our reply and supplied as an exhibit to the reply,  
16 in the third Chapter 11 case Mr. Kuntz appeared and filed a  
17 lift stay motion seeking to access the escrow funds on account  
18 of his interest in the zero notes. He fully litigated that  
19 lift stay motion and the relief was denied.

20 Each of these, separately and taken together, are res  
21 judicata for all the claims he seeks to assert here, before we  
22 even get to whether or not these funds were disbursed somehow  
23 to LCPI, for which there is no evidence.

24 In sum, Your Honor, Mr. Kuntz hasn't provided one  
25 shred of evidence to support these fictitious theories

1 amounting to his signed and filed claims in the amount of  
2 eleven million dollars. Not a single pleading, agreement,  
3 letter, decision of the court, transcript or other evidence.  
4 Nothing.

5 We, the debtors, have scoured the information he  
6 provided and the Grand Union Chapter 11 cases, all three of  
7 them, and we have found no evidence that he has any interest in  
8 an escrow or that funds were inappropriately disbursed to LCPI.

9 Mr. Kuntz can't provide such evidence because no such  
10 evidence exists. His attempt to collect his fictitious claim  
11 from the debtor's estate, to the detriment of all of the  
12 legitimate creditors in these Chapter 11 cases, cannot  
13 continue. He has not and cannot meet his burden to establish a  
14 valid claim against these debtors and we request that the Court  
15 overrule Mr. Kuntz' responses and that the debtor's objections  
16 be granted and Mr. Kuntz' remaining claims be expunged.

17 THE COURT: All right. Thank you. Mr. Kuntz?

18 MR. KUNTZ: Thank you, Mr. Waisman. I think you  
19 should take up a career in writing fiction.

20 THE COURT: What did you say?

21 MR. KUNTZ: I think he should take up a career writing  
22 fiction, Your Honor.

23 THE COURT: That's -- that's -- that's really an  
24 inappropriate comment.

25 MR. KUNTZ: That's not inappropriate. I have the

1 decision of Judge -- District Court Judge Martini.

2 THE COURT: What does that have to do with what he  
3 just said?

4 MR. KUNTZ: Weil Gotshal is co-counsel to Grand Union  
5 in New Jersey. Now they profess to know nothing, we don't know  
6 anything. They were paid millions of dollars in fees. Mr.  
7 Tannenbaum was copied on their own exhibit. He's a partner in  
8 their firm. In their own exhibit it discusses the cash escrow  
9 account. Okay. I just want to clear this first.

10 THE COURT: Mr. Kuntz, I've read your papers, I read  
11 your affidavit. This is your opportunity to respond --

12 MR. KUNTZ: All right, Your Honor. I will give --

13 THE COURT: -- will you listen to me, first?

14 MR. KUNTZ: Yes, Your Honor.

15 THE COURT: This is your opportunity to respond to the  
16 objection that has been and in particular to the allegation  
17 that you have no proof that LCPI or any other Lehman entity  
18 took, inappropriately, any funds in which you might have a  
19 legitimate interest.

20 So the essential question before the Court has nothing  
21 to do with Weil Gotshal, it has everything to do with you. How  
22 do you prove a claim?

23 MR. KUNTZ: I understand, Your Honor. May I digress  
24 for a moment? Before Your Honor --

25 THE COURT: If you can just answer the question.

1 MR. KUNTZ: May I digress for a moment? Before Your  
2 Honor has to relive and go through all this Grand Union  
3 situation and without the help of counsel for the debtor, I've  
4 discovered that there remains unclaimed funds in the Grand  
5 Union episode in New Jersey, with the Department of Unclaimed  
6 Funds.

7 Now it's my understanding, since they only provided  
8 the plan from the first Grand Union things, that those are  
9 potentially Lehman Brothers funds. And in the interest of  
10 judicial economy, since Judge Winfield has already lived these  
11 two cases in New Jersey, that the question of my interest in  
12 the escrow fund be considered by her. And if Your Honor says  
13 no, I'm happy to proceed. If Your Honor would like to consider  
14 it, I think it would save Your Honor a lot of aggravation and a  
15 lot of time if Judge Winfield, who considered both cases and  
16 came up with the order replacing the missing stock certificate,  
17 has an opportunity now, eleven years later, to decide on a cash  
18 escrow account that should have been decided fairly and fully  
19 eleven years ago.

20 That is, I've heard often in this courtroom, oh but  
21 out of an abundance of caution we're coming here, this, that  
22 and the other. They had an opportunity eleven years ago to put  
23 the question of the escrow before Judge Winfield and say is it  
24 okay that we have the money, can it go into Grand Union, is it  
25 not okay? Should you go back down to Judge Walsh in Delaware,

1 since it's his original case? They chose to assume the risk of  
2 not putting it before Judge Winfield. They chose to assume the  
3 risk of not putting it before Judge Walsh, okay.

4 And my situation is rather unique and it hasn't been  
5 addressed by counsel yet. I'm the holder of zero coupon notes.  
6 I understand that as a holder of the notes my rights to  
7 challenge the actual escrow, although I might have gone and  
8 said something, the rights to challenge the escrow belong to my  
9 indentured trustees, they don't belong to me. My rights over  
10 in New Jersey were the rights to the ownership of the security  
11 that went missing in the back office of which is now Wells  
12 Fargo advisors. The rights to go after the escrow belongs to  
13 the -- that is the power and the rights, belongs to the  
14 indentured trustee of a zero until the date the zeros mature.  
15 These zeros did not mature until 2004 and 2007.

16 So my understanding is, I might have been very unhappy  
17 with the situation, and I said so before Judge Winfield and I  
18 said it in two different cases, but the actual power to go  
19 after the escrow didn't belong to me, it belonged to the  
20 trustees, U.S. Bank and now HSBC. And I remember Your Honor's  
21 decision with the Hong Kong mini bonds eighteen months ago. I  
22 was very concerned that Mr. Waisman was going to pick up on  
23 that because you know what, and I'm being candid, had he used  
24 that I would have been out of this case a year and a half ago,  
25 because it's my trustees that had, before the maturity of the



1 notes, the power and the right to go after the escrow.

2 Now statistically, 99.7 percent of the bondholders  
3 tendered. So my understanding is there was a 700 million  
4 dollar issue sold to bail out Solomon Brothers and  
5 statistically that violates the Martin Act in this state. They  
6 sold 700 million dollars worth of securities and nobody got  
7 paid.

8 Now the coverage on the notes, 99.7 percent tendered,  
9 that is 700 million versus the three million escrow, went down  
10 to where my notes were covered. MHT was not the financial  
11 advisor. MHT, as reflected in many places, was the controlling  
12 entity of Grand Union as well as Penn Traffic stores in  
13 Syracuse. It's listed all throughout the papers and Mr.  
14 Waisman says, oh there's nothing in our papers. In their own  
15 exhibit it references, in Exhibit 4 I believe, Grand Union,  
16 Miller Hirsch Tabak, zero coupon notes, sign the release, we're  
17 home free escrow.

18 So what you have here Your Honor is really knotty  
19 little problem of bondholders, trustee, a cash escrow account,  
20 what happened in their own exhibit it says that the cash escrow  
21 account went into Grand Union's operating account. Lehman was  
22 the creditor, the fund were co-mingled.

23 And I've shown in the exhibits, CNS that bought Grand  
24 Union is stonewalling me. The state comptroller's office moves  
25 at a speed of snail that would make a race horse at Saratoga

1 seem fast. So I'm here, no discovery, this firm was co-counsel  
2 to Grand Union in New Jersey and they're saying we don't have  
3 any records, we don't know. And as I put in my affidavit, all  
4 my records were destroyed. I'm really sorry about that, or  
5 else I would have provided copies of the deposition. But I had  
6 an unfortunate episode in upstate New York, a house was sold  
7 where all my stuff went and it's all gone. And I have the  
8 original correspondence if Your Honor would choose to look at  
9 it at some future point.

10 THE COURT: I don't mean to break in.

11 MR. KUNTZ: Go right ahead, Your Honor.

12 THE COURT: I think you have just said that you lack  
13 the ability to present any documents in support of the  
14 arguments made in your proof of claim and in your various  
15 submissions, that there is Lehman related liability for what  
16 happened in the Grand Union bankruptcy case, is that correct?

17 MR. KUNTZ: No, I didn't say that. I said in my  
18 papers I said all the Grand Union records that are available  
19 and have been available to this firm who is co-counsel, are in  
20 the federal records repository.

21 Now as I understand, under the local rules --

22 THE COURT: Just answer my question, which was the  
23 first question that I posed to you and you said you were going  
24 to, with permission, say some other things that were not  
25 responsive and I'm not sure if you're yet to the point of

1 responding to my question, which is why I interrupted.

2 You said that you lost, as a result of the loss of a  
3 house upstate --

4 MR. KUNTZ: Yes, Your Honor.

5 THE COURT: -- access to a number of personal records.

6 MR. KUNTZ: Yes, Your Honor.

7 THE COURT: As a result of which you no longer have  
8 copies of certain documents that used to be in your possession,  
9 is that correct?

10 MR. KUNTZ: That's correct, Your Honor.

11 THE COURT: Okay. So my question to you is, do you  
12 have available to you any proof that would connect your claims  
13 in the Grand Union case to Lehman Brothers?

14 MR. KUNTZ: I believe it's in their own exhibit. It's  
15 in the letter from the attorney sent to Judge Winfield. It  
16 discusses the escrow account; it discusses depositing the  
17 escrow account in there. It copies Mr. Waisman's firm.  
18 Attached to my first reply is the security -- the outline of  
19 the security interest of Lehman Commercial Paper and Grand  
20 Union.

21 THE COURT: Well, this isn't a --

22 MR. KUNTZ: It's all there before Your Honor.

23 THE COURT: This isn't a mystery novel. It's not  
24 something I or anybody --

25 MR. KUNTZ: It's already there, Your Honor. I've

1 already provided it.

2 THE COURT: Wait, Mr. Kuntz. We have to have a  
3 respectful dialogue, which means that I listen to you and you  
4 listen to me.

5 MR. KUNTZ: Thank you, Your Honor.

6 THE COURT: Where is there proof that connects your  
7 claims, whatever they may be, relating to Grand Union to any  
8 debtor?

9 MR. KUNTZ: Can I refer to the May 11, 2011 (sic)  
10 letter of Raven Greenberg, co-counsel to Weil Gotshal, which is  
11 contained in their objection to my claims? It's a five-page  
12 letter. I'm not going to, necessarily, read off it. It says  
13 quite clearly in there that they discussed the cash escrow,  
14 they discuss it being deposited.

15 THE COURT: Well, even if there is a cash escrow and  
16 even if you have claims against the cash escrow, what is your  
17 claim that Lehman improperly took a cash escrow to your  
18 detriment?

19 MR. KUNTZ: I didn't say improperly yet. I haven't  
20 been allowed any discovery, Your Honor. I'm simply -- you  
21 know, for two years I was basically scoffed at. Your Honor was  
22 questioning whether there was even an escrow. Well, lo and  
23 behold, today there was a three million dollar escrow.

24 You know, co-counsel to Grand Union paid fifteen,  
25 twenty million dollars in legal fees, full access to all of

1 Grand Union records, well we can't find your deposition.  
2 They've had a year and a half, two years, to ask and how many  
3 hundreds of millions of dollars have been paid to professionals  
4 here? Do you think they could send something off to the  
5 federal records repository, a seventy-five dollar check, send  
6 us a copy of your Grand Union papers. They haven't done it.

7 Your Honor has said the burden shifts back and forth.  
8 Valid claim, objection, back to me, the ball's in my court. In  
9 their own document it discusses the cash escrow.

10 THE COURT: Mr. Kuntz, I'm asking you a very focused  
11 question.

12 MR. KUNTZ: I don't know the answer to that question,  
13 Your Honor.

14 THE COURT: How --

15 MR. KUNTZ: Because there's no follow through.

16 THE COURT: How do you intend, today or any other day,  
17 to meet your burden of proof to establish a causal link between  
18 your claims, whatever they may be in the Grand Union bankruptcy  
19 and any cognizable claim in the Lehman bankruptcies?

20 MR. KUNTZ: It's very simple, Your Honor. Under the  
21 escrow agreement, if it can be established. Statistically, I  
22 believe, it's already established, but if it can be established  
23 to Your Honor's legal satisfaction that the Miller Hirsch firm  
24 violated the Martin Act in this state, that would allow me an  
25 interest in the escrow fund because the escrow fund was

1 created, not them as financial advisors, they were the  
2 controllers.

3 It says clearly that they assisted Solomon Brothers in  
4 purchasing Grand Union and they did the underwriting when Grand  
5 Union went private, so to speak, and Solomon Brothers, and the  
6 underwriting was done by Goldman Sachs, 700 million dollars in  
7 bonds sold to three or four large mutual funds, Solomon  
8 Brothers, at the time controlled by Mr. Goodfriend and then Mr.  
9 Buffett got the proceeds. Five years later, they take the 99.7  
10 wipe out, 700 million dollars gone.

11 I think anybody who understand anything about the  
12 Martin Act, that's a prima facie case that there's a violation.  
13 It may not be a legal case but it's a prime facie case that  
14 there's a violation of the Martin Act and a violation of the  
15 Martin Act allows me to reach toward the escrow fund.

16 That doesn't mean -- and I don't really know what  
17 happened to the escrow fund. It went in and CNS came along and  
18 they gave Lehman I don't know how many hundreds of millions of  
19 dollars so there was a co-mingling. And I'm simply -- it's my  
20 belief that I have an interest, now, in that fund and I've done  
21 it by filing proof of claims. And quite frankly, I shouldn't  
22 even be standing here.

23 U.S. Bank and HSBC, who were the respective trustees,  
24 should be doing this work for me, but they don't care because  
25 they already got their money and as far as they've concerned

1 they've purged their records in their computers. Nobody knows  
2 nothing, nobody cares nothing because I'm just some stupid  
3 retail investor who's trying to get to the table in basically a  
4 case where the institutional investors are invited and I'm just  
5 some sort of interloper who's been after this money for fifteen  
6 years.

7 And I'm trying to do it -- and my understanding of the  
8 constraints on me as a holder of these securities, where  
9 there's trustees, where I did not take the situation in  
10 Delaware, where one of the three securities was gobbled up by  
11 the back office of the Depository Trust Company, it took two  
12 years to get Judge Winfield to order that back.

13 So I'm here today, after two years of oh there isn't  
14 even an escrow account, well there was an escrow account and  
15 it's colorable now before Your Honor, or unless Your Honor, as  
16 I suggested, wants to send it to Judge Winfield, it remains to  
17 be further inquired into. I've had no discovery. Nobody  
18 showed me anything. CNS is, like, we're not going to give you  
19 anything; if you do anything further we're going to sue you.  
20 The state comptroller's office does nothing.

21 THE COURT: Mr. Kuntz --

22 MR. KUNTZ: Mr. Waisman's firm has full access to the  
23 deposition.

24 THE COURT: Mr. Kuntz?

25 MR. KUNTZ: Yes, Your Honor.

1 THE COURT: Do I understand from what you've said that  
2 your claim in the present bankruptcy case before me is based  
3 upon your belief, to use the word that I heard you articulate,  
4 that the escrow has ended up in Lehman's accounts co-mingled  
5 with other funds? Is that the basis of your claim?

6 MR. KUNTZ: That's close to it.

7 THE COURT: What's the basis of your claim?

8 MR. KUNTZ: The claim would be one step further  
9 removed, that it went in co-mingled at Grand Union, subject to  
10 Lehman's security interest, then, I believe, a 363 buyer came  
11 along and purchased Grand Union and Lehman got paid.

12 So at a certain point the escrow, sort of, goes off  
13 the radar. There was no hearing before Judge Winfield; there  
14 was no hearing before Judge Walsh. And it's now somewhere in  
15 the overall Lehman balance sheet of problems and that's what I  
16 believe.

17 THE COURT: Okay. I understand that's what you --

18 MR. KUNTZ: I'm sorry I just don't have a cut and  
19 dried situation.

20 THE COURT: I understand that's what you believe. How  
21 does what you believe translate into a claim against the Lehman  
22 estate that is entitled to allowance?

23 MR. KUNTZ: It's the violation of the Martin Act,  
24 creates a superior claim to the escrow fund that Lehman, as a  
25 creditor of Grand Union, then my claim prevails and therefore



1 my claim in this case prevails.

2 THE COURT: I didn't understand what you just said.

3 MR. KUNTZ: The Martin Act is a law in New York State  
4 that prevents the sale, fraudulent sale of securities. Seven  
5 hundred million dollars sold in securities, payment -- very,  
6 very micro amount of payment. Most people would think if you  
7 gave somebody a hundred dollars and you got a nickel back or a  
8 penny you were swindled, to use Victor Kurtz' term.

9 The escrow fund was created as, sort of, cold comfort  
10 to Miller Hirsch & Tabak, who were controlling Grand Union  
11 having bought it from Solomon Brothers and underwritten it  
12 through Goldman Sachs, as cold comfort for perhaps six, seven,  
13 eight years when the writing, in essence, the time and the  
14 writing came on the wall that Grand Union was going to be gone  
15 and only their trade dress remains in the retail market, they  
16 decided to pocket the escrow account.

17 There was no hearing before Judge Winfield. There was  
18 no hearing before Judge Walsh. It was a very simple deal. The  
19 matter was already before Judge Winfield. All they had to do  
20 was say, Your Honor; we would like Your Honor's approval for us  
21 to deposit this escrow into Grand Union's operating account.  
22 Judge Winfield would have said, Mr. Kuntz what do you say?  
23 That didn't happen. Judge Winfield was already troubled by the  
24 fact that almost a million dollar security had gone missing.  
25 And she -- you know, there was paperwork in there and finally I

1 accepted the return of my security, which is what I wanted all  
2 along.

3 It would have been very simple, since she was already  
4 up to speed on the situation, for them to say we'd like the  
5 Court's approval of the escrow and Judge Winfield could have  
6 said, well, this should have been Judge Walsh. He created --  
7 he approved this in '95. Go down to Delaware, take Amtrak down  
8 to Delaware and talk to him. Or she could have said it's not  
9 really in my case, go right ahead. Mr. Kuntz, if you don't  
10 like it go across the street or go upstairs, talk to the  
11 district judge in New Jersey. That didn't happen. That did  
12 not happen. And I have heard over and over again, ad nauseam,  
13 in an abundance of caution. That didn't happen.

14 You have -- they took a calculated risk. They never  
15 thought Lehman Brothers, in their wildest dreams, eleven years  
16 ago would end up here in this court. The strong of hands of  
17 Lehman Brothers, maybe they played a little shell game, it went  
18 here, it went there, the fundamental proceeds ended up in  
19 Lehman's hands and that's why I'm here today. And I've already  
20 demonstrated I saw trouble come with Lehman, I sold my stock.  
21 The excess money that I had in Lehman was deposited there. I  
22 had already started action in New York State Supreme Court  
23 before Lehman filed bankruptcy, that was in my automatic stay  
24 litigation.

25 I asked to come here to continue with that, Your Honor

1 denied it. Weil Gotshal says we don't know anything about  
2 Grand Union, what's this? It turns out they were co-counsel.  
3 District Court judge decision, letter opinion, co-counsel to  
4 Grand Union. It's outrageous that they sit here and act like  
5 they don't know anything about Grand Union, they know  
6 everything about it.

7 And you know -- and quite frankly the money has  
8 nothing to do with it. The money is just how everybody in this  
9 room, the few that are here today, keep score, trading claims,  
10 this, that and the other. The reason for the objection is to  
11 still the voice of dissent, just like out in Oklahoma. But in  
12 Oklahoma the CFS case, Judge Rasure's case out in Tulsa. You  
13 may recall, Your Honor, it started off when I asked to have the  
14 stay lifted and a large document was filed listing all these  
15 various cases that I've been involved in.

16 THE COURT: I'm familiar with that.

17 MR. KUNTZ: In that case in Oklahoma my credit card  
18 account was an asset of the estate. I was a judgment debtor of  
19 Key Bank. In this case I'm pursuing an escrow account that I  
20 believe is colorable sufficiently enough for my claim to  
21 withstand this challenge and go over into an evidentiary  
22 hearing, which is provided by the local rules.

23 Now, if the four gentlemen are gentlemen they'll come  
24 to court without a subpoena. I'm not so foolish as to think  
25 I'm going to issue subpoenas so the retired chairman of Solomon

1 Brothers, a partner of the firm, a former partner of the firm.  
2 If they'll come along to court, so be it. If they won't come  
3 along to court, Your Honor can draw your own conclusions. If  
4 they're gentlemen they will come, no matter what their personal  
5 risk.

6 Solomon Brothers was almost a mirror image of Lehman,  
7 except that it didn't collapse. Thank you, Your Honor.

8 THE COURT: Mr. Kuntz, I --

9 MR. KUNTZ: Go ahead and rule.

10 THE COURT: I actually am not ready to rule, I need to  
11 hear more from you.

12 MR. KUNTZ: Thank you, Your Honor.

13 THE COURT: I need to hear some more focused comments,  
14 though. You have a burden proof and you recognize that. You  
15 have a belief which you have used as the basis for filing a  
16 number of proofs of claim against Lehman Brothers.

17 I am still struggling in my attempts to understand how  
18 your sincere belief that money that you have a claim to from a  
19 Grand Union bankruptcy case in New Jersey --

20 MR. KUNTZ: Delaware, Your Honor.

21 THE COURT: Well, I thought that we had a Judge  
22 Winfield case in the third Grand Union case in which you  
23 appeared, correct?

24 MR. KUNTZ: Second and third.

25 THE COURT: There were two in Delaware and one in New

1 Jersey?

2 MR. KUNTZ: Two in New Jersey. The first one was in  
3 Delaware.

4 THE COURT: That was Judge Walsh's case?

5 MR. KUNTZ: Right. There was Judge Walsh. There was  
6 Grand Union Company, Grand Union Capital and Grand Union  
7 Holding.

8 THE COURT: The record will reflect, in those cases,  
9 where they were filed but let me get it right. First one was  
10 in Delaware before Judge Walsh.

11 MR. KUNTZ: That's correct, Your Honor.

12 THE COURT: Then the second and third cases were in  
13 front of Judge Winfield in New Jersey, correct?

14 MR. KUNTZ: Yes, Your Honor.

15 THE COURT: You were a creditor in all three cases?

16 MR. KUNTZ: No. I was a creditor in the New Jersey  
17 cases only to the extent that the 892,000 face, which is the  
18 smallest of the three that I owned, I had -- there was an  
19 exchange period. I waited a year and so many months, I held  
20 the security out. I put the security back into my account on  
21 Park Avenue and the depository trust company, the next morning,  
22 converted it into warrants. That is -- I didn't sign the  
23 transfer agreement or anything. We had two years go around.  
24 Judge Winfield says give it back and at which point my claim  
25 was expunged from the New Jersey case and that was it.

1 THE COURT: All right. I'm just trying to get some  
2 basic facts understood and mostly it has to do with your  
3 ability to prove a claim here.

4 As I understand your belief, it is that Lehman  
5 Brothers --

6 MR. KUNTZ: Commercial Paper.

7 THE COURT: -- LCPI, has liability to you in  
8 connection with certain activities that took place in a New  
9 Jersey bankruptcy, is that correct?

10 MR. KUNTZ: Yes, Your Honor.

11 THE COURT: And is it in the second or the third cases  
12 or both cases that this liability creating activity took place?

13 MR. KUNTZ: I believe, if I'm looking at the exhibits  
14 to my first one, I'm looking at June 24th, 1998 revolving  
15 credit agreement between Grand Union and Lehman Brothers,  
16 Lehman Brothers Commercial Paper, SBC Warburg Dillon Read. A  
17 300 million dollar senior secured credit facility between Swiss  
18 Bank Corporation, Lehman Commercial Paper and SBC Warburg  
19 Dillon, and these are pages -- these are right after the  
20 district court letter opinion where -- mentioning Grand Union  
21 as co-counsel, they're right in here.

22 And to my knowledge, somehow or the other, and I don't  
23 know the nuts and bolts of it, the three million went in and  
24 got sucked up into the Lehman vacuum cleaner. Now whether it  
25 went here, there or jumped around, like, you know, a piece of

1 popcorn or something on a hot griddle, I don't know because  
2 they won't tell me. CNS won't tell me. The State of New York  
3 won't bother. I haven't had any discovery per se. And as Mr.  
4 Waisman refers to my handwritten notes, I'm sorry I don't have  
5 a big staff, I've tried to pursue the information that I need  
6 to really prove my claim, rather than get close to my claim.

7 THE COURT: Okay. Well, I'm still trying to  
8 understand what your claim is. So let's understand first what  
9 your claim is and then understand whether or not you have any  
10 ability to prove it.

11 MR. KUNTZ: Thank you, Your Honor.

12 THE COURT: Is your claim a claim that is, in effect,  
13 a derivative of what happened in New Jersey before Judge  
14 Winfield?

15 MR. KUNTZ: No.

16 THE COURT: It's not based upon what happened in New  
17 Jersey?

18 MR. KUNTZ: No, it's what happened in Delaware.

19 THE COURT: What happened in Delaware?

20 MR. KUNTZ: Grand Union Company made a settlement with  
21 Grand Union -- well, let me back up.

22 Grand Union Company went into bankruptcy. Capital and  
23 Holding, the parents, were, sort of, out there and there was a  
24 lot of anger when it was determined that, for whatever reason,  
25 even though 700 million dollars had gone into Grand Union

1 Capital in the morning and gone out in the afternoon, Grand  
2 Union Capital didn't have promissory note, didn't have a  
3 cancelled check, they had no way to really become the major  
4 claimant in Grand Union Capital.

5 So a settlement was made and Grand Union Company was  
6 reorganized, the grocery store chain, and went on and filed  
7 bankruptcy a couple more times and now is liquidated and runs  
8 as C&S Wholesalers in New Hampshire.

9 Grand Union Capital and Grand Union Holdings never  
10 filed a plan of reorganization. There was never a confirmation  
11 of a plan, that was never filed. The cases were dismissed by  
12 Judge Walsh and the companies were liquidated or dissolved in  
13 Delaware without notice or distribution to the creditors.  
14 Twelve million dollars of assets that were reported, in my  
15 recollection, to the best of my information, twelve million  
16 dollars of intercompany assets in Grand Union Capital Corp went  
17 missing.

18 The only tail end of that money to ever show up was  
19 deposited by Grand Union Capital Corp with the New York State  
20 comptroller in Albany, and that's in my exhibit. That's -- out  
21 of twelve million dollars of assets, everything was gone and it  
22 all went to some office in Wayne, New Jersey run by Miller  
23 Hirsch & Tabak.

24 THE COURT: Mr. Kuntz --

25 MR. KUNTZ: Now the three million was separate from



1 that. Thank you, Your Honor.

2 THE COURT: Mr. Kuntz, you had, at some point, zero  
3 coupon notes issued by Grand Union Capital Corporation?

4 MR. KUNTZ: Yes, Your Honor.

5 THE COURT: And you had various claims evidenced by  
6 those notes, were those claims treated in each of the three  
7 bankruptcies?

8 MR. KUNTZ: No.

9 THE COURT: Did you have a claim in the Delaware  
10 bankruptcy?

11 MR. KUNTZ: The claims that were asserted on my behalf  
12 were asserted by Grand Union Capital's indentured trustees, not  
13 dissimilar to what's happening in this case. That is, there  
14 was a trustee. The trustee went forward before Judge Walsh in  
15 Grand Union Company. They approved the settlement and at the  
16 settlement hearing there was an oral modification that said Mr.  
17 Kuntz is not taking the deal and his notes are not cancelled  
18 and his indenture basically remain in full force and effect.

19 THE COURT: Is it correct that whatever claims you  
20 assert here those claims are predicated upon your historical  
21 ownership of the zero coupon notes that were issued by Grand  
22 Union Capital Corporation?

23 MR. KUNTZ: Yes, Your Honor.

24 THE COURT: Do you still have those notes?

25 MR. KUNTZ: Yes, Your Honor. Well, I have two

1 physical notes which my son Andrew has at my ex-wife's house in  
2 upstate New York, which is a long story. And the third is  
3 reflected by the stipulation which is in the exhibit with Judge  
4 Winfield, which actually went back into my account at Wells  
5 Fargo and then they lost it again, but that's another story.  
6 And I can produce those in time, but not today.

7 THE COURT: Do those notes represent claims against  
8 the three million dollar escrow fund?

9 MR. KUNTZ: I believe they do.

10 THE COURT: What's the basis for that belief?

11 MR. KUNTZ: That as the sole remaining -- as a  
12 creditor of Grand Union Capital Corp, that is the failure --  
13 that is had Grand Union Capital put on a plan, no asset  
14 liquidation, whatever, I would have been wiped out. That would  
15 have been it twelve, fifteen years ago. But when they  
16 dismissed the bankruptcy cases without a plan and they  
17 dissolved the corporations in Delaware without notice or  
18 distribution to the creditors, that's all part of the scheme in  
19 the Martin Act.

20 I mean, if I was as clever as some of the lawyers here  
21 I might even have been able to make a reco but I'm not that  
22 ambitious or that smart. I just know that if there's -- if you  
23 have securities and the company that issues the securities  
24 takes off and all the money disappears and there's nothing  
25 except teeny little fragments on deposit in Albany, that's

1 basically pretty -- to me it pretty much indicates that there's  
2 a violation of the Martin Act. Because all through the  
3 documents these things are governed under New York law, not New  
4 Jersey law, not Delaware law, New York law and New York law is  
5 where the Martin Act resides and therefore, I think, that if  
6 statistically, as I said, the violation of the Martin Act is  
7 established. Legally I don't know because I don't have any  
8 information. I haven't seen any of the memos. For instance,  
9 there's no smoking gun, an e-mail from somebody to somebody  
10 saying let's do this; let's not put this before Judge Winfield  
11 she might give Kuntz the three million. That's my thought, was  
12 that Judge Winfield might have just given me the escrow  
13 account.

14 THE COURT: At what point do you allege that Lehman  
15 Commercial Paper did anything to your detriment?

16 MR. KUNTZ: I believe it would be reflected in the  
17 exhibit that they have to their motion, reflected in the letter  
18 from their co-counsel.

19 THE COURT: I'm not understanding that reference.

20 MR. KUNTZ: There's a letter --

21 THE COURT: What did they do that hurt you?

22 MR. KUNTZ: They knowingly took an escrow account, by  
23 circuitous routes, that they knew or should have known that I  
24 had a superior claim to and they denied it.

25 THE COURT: What was the amount of that claim? How

1 much of that three million dollar escrow represented anything  
2 that you were entitled to?

3 MR. KUNTZ: All of it.

4 THE COURT: Why?

5 MR. KUNTZ: Because my bonds exceed the amount of the  
6 escrow account.

7 THE COURT: And why did the three million dollar  
8 escrow account represent security for your bonds?

9 MR. KUNTZ: I didn't say security.

10 THE COURT: What gave you any entitlement to a nickel  
11 in that account?

12 MR. KUNTZ: Because the escrow account was set up to  
13 protect the controllers of Grand Union from violations of law,  
14 as said in their papers. And the Martin Act is a law to  
15 prevent the fraudulent sale of securities. If they sell 700  
16 million dollars of securities and nobody gets paid, nobody gets  
17 paid, if I don't get paid then, say, Putnam funds sitting in  
18 Boston, Lutheran Brotherhood, they might come back and say gee,  
19 Solomon Brothers, Smith Barney, Mr. Buffett, where's our money?  
20 You can't sell -- I mean, that's what this case is all about,  
21 is securities law, bonds, stocks, this, that and the other.

22 In New York State, this is not the Bahamas as Your  
23 Honor's already expressed a distrust for or some third world  
24 country. You can't sell 700 million dollars worth of bonds  
25 across the stock market and nobody gets paid. In the old time

1 parlance of Victor Kurtz, that's a swindle and that's what it  
2 is.

3 THE COURT: Mr. Kuntz, I'm simply focused on a very,  
4 very narrow point.

5 MR. KUNTZ: I understand, Your Honor.

6 THE COURT: And my point is do you have a claim in  
7 this case?

8 MR. KUNTZ: Yes, Your Honor.

9 THE COURT: That's what I'm trying to understand.  
10 You're saying yes, I don't understand why you have a claim in  
11 this case. You haven't made that clear to me nor have you  
12 demonstrated an ability to prove that you have a claim. This  
13 is your chance to do just that.

14 MR. KUNTZ: Your Honor, I believe under the notice for  
15 the 9000 Rule notice, it's in the rules that if you're going to  
16 call witnesses there's got to be another hearing.

17 Now, I basically laid it out as best I can.

18 THE COURT: Are you going to call Warren Buffett?

19 MR. KUNTZ: I wrote a letter to him, you saw it.

20 THE COURT: I did see it.

21 MR. KUNTZ: I am not --

22 THE COURT: What does Warren Buffett have to do  
23 with --

24 MR. KUNTZ: He was the chairman of Solomon Brothers  
25 when they took the 700 million.

1 THE COURT: What does that have to do with whether you  
2 have a claim?

3 MR. KUNTZ: He has personal knowledge if it was a  
4 fraud or not.

5 THE COURT: What does that have to do with whether you  
6 have a claim against LCPI here?

7 MR. KUNTZ: Because if the Lehman Brothers -- if the  
8 escrow account was tainted by a violation of the Martin Act  
9 then my claim to the funds is superior to them as the creditor  
10 to Grand Unions. Proceeds of a crime, call it what you want.  
11 If there's a violation of the Martin Act then my rights to that  
12 fund is superior to them as a bread and butter lender.

13 THE COURT: Mr. Kuntz, do you want an evidentiary  
14 hearing?

15 MR. KUNTZ: If Your Honor wishes?

16 THE COURT: No.

17 MR. KUNTZ: I've asked for it.

18 THE COURT: I've asked, do you want an evidentiary  
19 hearing?

20 MR. KUNTZ: Yes, I do.

21 THE COURT: And what witnesses do you intend to call  
22 and what evidence --

23 MR. KUNTZ: I've already listed them.

24 THE COURT: -- and what evidence do you intend to  
25 offer?

1 MR. KUNTZ: I'm going to ask their testimony, what  
2 they know about Grand Union. I'm going to ask Mr. Dannenberg  
3 what about this letter here. I'm going to ask Mr. Basta the  
4 former partner did you guys cook up the deal to push away the  
5 escrow account? Why didn't you put it before Judge Winfield?  
6 You were there every week for two years, you had three, four  
7 hundred million dollars tied up with Lehman Brothers, your  
8 client, at the same time you were co-counsel. Why didn't you  
9 just simply go to Judge Winfield, say Judge Winfield can we  
10 take the escrow account? Kuntz is over there, he's all ticked  
11 off about this escrow account, can we have the money.

12 Did they do that? No, they didn't do it. They chose  
13 to assume the risk and in this case they never thought eleven  
14 years ago that Lehman Brothers, Lehman Brothers was the big,  
15 strong, 300 billion, you know, whatever, they never thought it  
16 would be here. I never have the opportunity to even get a  
17 recovery if Lehman hadn't filed.

18 THE COURT: Okay. I'm going to ask --

19 MR. KUNTZ: Thank you, Your Honor.

20 THE COURT: I'm going to ask debtor's counsel whether  
21 or not debtor's counsel has a position on the request made by  
22 Mr. Kuntz for an evidentiary hearing that would include a  
23 number of witnesses who so far have simply been asked to  
24 consider voluntarily appearing at such a hearing.

25 MR. WAISMAN: Your Honor, first of all, Mr. Kuntz has

1 not made out a prima facie claim. And even assuming everything  
2 he has said to this Court today and the paltry documentation he  
3 has submitted, even assuming it is all correct, true and  
4 accurate, it does not give a rise to a claim against LCPI or  
5 any of the debtors and there is no need and he has no right to  
6 an evidentiary hearing.

7 If we're going to entertain an evidentiary hearing,  
8 Your Honor asked him what do you -- what do you intend to  
9 present and everything he's already told us he intends to  
10 present is wholly irrelevant.

11 Your Honor saw his request for testimony was never  
12 properly served. He requested voluntary appearances here  
13 today. I don't see Mr. Buffett here; I don't see Jeff  
14 Tannenbaum or Paul Basta here today.

15 I think, if we spend a moment looking at the  
16 allegations it's absolutely clear that there is no basis for a  
17 claim. Mr. Kuntz obtained zero coupon notes from an entity  
18 called Grand Union Capital Corp, up here, okay, prior to the  
19 first case. That company went into the first case and was then  
20 dissolved. That's his only relationship. That's the only  
21 entity he ever had a claim against.

22 There's another entity, Grand Union Company. Grand  
23 Union Company puts money into the cash escrow in the first  
24 case. Kuntz objects to it, his objection's overruled, the  
25 escrow is created.



1 It goes through the second case. We then go into the  
2 third case. Mr. Kuntz has no standing in that case. He is not  
3 a creditor in that case.

4 Nevertheless, he makes a motion to modify the stay to  
5 access the escrow for the same reasons, the same arguments he's  
6 making here today, and his request -- his motion is denied.  
7 There's no record of an appeal. The decision is not reversed.  
8 It is final and binding. He has no right to the cash escrow.  
9 It's not issued by the same company he has a claim against. We  
10 hear allegations of Martin Act violations, he never prosecuted  
11 those. They don't give rise to a right to the escrow. At  
12 best, from what I hear from Mr. Kuntz, he has a claim that he  
13 should bring in federal or state court against MTH. But that  
14 doesn't give him a claim here. And Your Honor, we did submit  
15 the letter brief submitted to Judge Winfield and her order as  
16 an exhibit but if I may hand up a copy?

17 THE COURT: Sure.

18 MR. WAISMAN: This is the letter that Mr. Kuntz has  
19 repeated referred to in his remarks. On top is Judge  
20 Winfield's order denying the relief. The letter brief, by  
21 Raven Greenberg, outlines that Mr. Kuntz has filed a motion for  
22 relief from the automatic stay to permit him to take such steps  
23 that the Court may deem necessary and proper in order to secure  
24 a certain escrow account which was established under the first  
25 Grand Union Chapter 11 cases.

1           The letter goes through chapter and verse, everything  
2       we've discussed here today. Mr. Kuntz was a creditor of  
3       Capital Corporation, no other entity. Capital Corporation does  
4       not exist. The escrow was created in the first case pursuant  
5       to order of the court, he objected. His objection was  
6       overruled, that case was confirmed. And the money is then  
7       disbursed into the operating account of Grand Union Capital --  
8       of Grand Union Company, an entity as to which he has no  
9       standing, he is not a creditor and he has no rights to the  
10      escrow.

11           The allegation that somehow there was a Martin Act  
12      violation prior to the first case, relating to Grand Union  
13      Capital Corporation and that gives him superior rights to an  
14      escrow by an unrelated entity for a specific purpose  
15      established pursuant to court order is outrageous. There is no  
16      basis for it. There isn't a single citation to statute or case  
17      authority that would give him any right to the escrow, let  
18      alone -- and let' get down to detail. It's not that he's --  
19      he's saying he has superior rights to the escrow; the escrow  
20      was disbursed into an operating account, that cash was used in  
21      the operations of the business. Ultimately that entity was  
22      liquidated and the assets, pursuant to a confirmed plan, were  
23      distributed to creditors.

24           He is saying that the cash distributed to all of the  
25      creditors in that third case doesn't belong to those creditors,

1 it belongs to him.

2 There simply is no basis for a claim, even asserted.  
3 Kuntz was a creditor of Capital Corporation, an entity that's  
4 been dissolved.

5 THE COURT: Okay. Thank you.

6 MR. KUNTZ: Your Honor, if I may point out, the order  
7 that Mr. Waisman refers to has the second bankruptcy case, it's  
8 a 1998 case, it's not the 2000 case.

9 So what he says that happened in the third case really  
10 happened in the second case where Judge Winfield gave me my  
11 security back. It's right here. It's case 98-27912. The  
12 Raven Greenberg letter has got the 2000 case number 0039613.  
13 So in essence he's putting the second case order forward saying  
14 this is what happened in the third case. That's not the  
15 exhibit.

16 MR. WAISMAN: That's inaccurate, Your Honor. The  
17 order, on its face, says May 21, 2001.

18 MR. KUNTZ: I've never seen that order, Your Honor.

19 MR. WAISMAN: Here it is.

20 MR. KUNTZ: This is -- Your Honor --

21 MR. WAISMAN: It was submitted with our papers.

22 MR. KUNTZ: Your Honor, we're already well into -- now  
23 we're having an evidentiary hearing with a copy given to the  
24 Court, which I've never seen, but he just held it up. That's  
25 why I asked for the evidentiary hearing.

1 I don't know if the gentlemen, and it says clearly in  
2 my notice, I didn't give them a date to come along. I said I  
3 expected to have something later in the month. If Your Honor  
4 chooses to have an evidentiary hearing I will invite them to  
5 come. I'm not so foolish as to think that I can I can go  
6 around and subpoena Warren Buffett and Mr. Goodfriend and a  
7 partner in his firm and a former partner in his firm to come  
8 and testify. I'm going to invite them, if they're gentlemen  
9 they will come. If they're not gentlemen they won't come.  
10 Your Honor can draw your own conclusions.

11 THE COURT: Okay.

12 MR. KUNTZ: And I'm not trying to make this, like, a  
13 grand -- the last thing in the world I want to do was put Mr.  
14 Buffett's name on that but he happened to be the chairman of  
15 Solomon Brothers when they got the 700 million dollars.

16 THE COURT: Okay. I think I --

17 MR. KUNTZ: Thank you, Your Honor.

18 THE COURT: I think I've heard enough for the time  
19 being. I'm going to take this under advisement, including the  
20 request made by Mr. Kuntz for an evidentiary hearing. I'll  
21 note that one of the things that I'm going to be thinking about  
22 is whether any of the witnesses identified by Mr. Kuntz can  
23 offer credible and relevant testimony in reference to the  
24 fairly narrow issue which is before the Court, which is whether  
25 the objection to Mr. Kuntz' various proofs of claim should be

1 granted.

2 One of the disturbing aspects of this dispute is that  
3 it's so obviously does not relate directly to anything that  
4 goes on in this court in the LCPI case. Everything that is  
5 being described by Mr. Kuntz relates to what went on many years  
6 ago in the context of three separate bankruptcy cases involving  
7 the Grand Union Company.

8 I also note that I have repeatedly asked Mr. Kuntz to  
9 explain how he would intend to establish his claim that LCPI  
10 has liability in reference to whatever happened to the escrow  
11 account that was established in the context of the Grand Union  
12 cases and I don't have a very clear understanding as to what he  
13 would do other than attempt to demonstrate that there was some  
14 fundamental impropriety or illegality in connection with the  
15 original financing of Grand Union Capital Corporation and Grand  
16 Union Company.

17 Connecting such unsubstantiated allegations to the  
18 present bankruptcy case would be a challenge for the most  
19 skillful lawyer and is a particular challenge for a non-lawyer  
20 such as Mr. Kuntz. But I note that Mr. Kuntz has ample  
21 personal experience in representing himself and his own  
22 interests, not only in this bankruptcy case where he has  
23 appeared routinely, but in other cases as well.

24 Ordinarily I would urge a pro se litigant to consider  
25 retaining counsel in order to properly present legal arguments,

1 but Mr. Kuntz appears quite comfortable in court and seems  
2 perfectly prepared, on his own, to express himself. So I'm  
3 going to assume that even if I were to urge that he retain  
4 counsel he would suggest that that wasn't necessary or that he  
5 couldn't afford it. Do you wish to comment on that, Mr. Kuntz?

6 MR. KUNTZ: Your Honor could solve that. He could  
7 issue an order to show cause why the indentured trustees don't  
8 take my shoes. They're still the trustees. The U.S. Bank is  
9 already before the Court. HSBC is already before the Court.  
10 It wouldn't be very hard for their lawyers to roll into court  
11 and say, gee we're asleep at the switch, we didn't know. I  
12 mean, you know.

13 THE COURT: If you have any claims against your  
14 indentured trustee I'm sure you'll pursue them.

15 MR. KUNTZ: That, Your Honor, is a very succinct  
16 observation. That's my fall back position. Thank you.

17 THE COURT: All right. This is under advisement and  
18 I'm just going to ask if anybody else has anything more to say  
19 on this subject?

20 THE COURT: We're adjourned.

21 (Whereupon these proceedings were concluded at 12:19 p.m.)  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' omnibus objection to claims with respect to omnibus objection 35 granted	10	11
Debtors' omnibus objection to claims with respect to omnibus objection 36 granted	10	24
Debtors' omnibus objection to claims with respect to omnibus objection 37 granted	11	8
Debtors' omnibus objection to claims with respect to omnibus objection 38 granted	12	6
Debtors' omnibus objection to claims with respect to omnibus objection 40 through 43 granted	12	24
Debtors' omnibus objection to claims with respect to omnibus objection 44 granted	13	10
Debtors' omnibus objection to claims with respect to omnibus objection 29 granted; RBC Capital Markets to be removed from debtors' objection	40	25
Debtors' omnibus objection to claims with respect to omnibus objection 39 granted	43	7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' objections to claims filed by	85	17
Mr. Kuntz to be taken under advisement		



C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

**Lisa Bar-Leib**

Digitally signed by Lisa Bar-Leib  
DN: cn=Lisa Bar-Leib, c=US  
Reason: I am the author of this document  
Date: 2010.10.28 16:54:33 -04'00'

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET\*\*D-486)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: October 28, 2010